IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPEAL NO. 48 OF 2023

(Appeal from the decision of the District Court of Simanjiro in Criminal Case No. 57 of 2021 Hon. C. S. Uiso-PRM dated 22nd July 2022)

EZEKIEL LESION @ LAIZER.....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

JUDGMENT

29/8/2023 & 19/9/2023

BARTHY, J.

Ezekiel Lesion @Laizer hereinafter referred to as the appellant, was arraigned before Simanjiro District Court (hereinafter referred as the trial court), charged with one count of unlawful possession of narcotic drugs contrary to section 11 (1) of the Drugs Control and Enforcement Act No. 5 of 2015 (the DCEA).

It was alleged before the trial court that, on 11th August 2021 at the main gate of Mirerani area within Simanjiro District in Manyara Region, the appellant was found in unlawful possession of 202 rolls of narcotic drugs namely cannabis sativa commonly known as *bhangi*.

The appellant pleaded not guilty to the charge, hence a full trial ensued. After the hearing, the trial court was convinced the offence was proved beyond all doubts. The trial court went ahead to convict and sentence the appellant to 30 years imprisonment.

In an attempt to validate the offence, the appellant stood charged, the prosecution paraded three witnesses and tendered a total of five exhibits. On the other hand, the appellant was the sole defence witness.

A brief factual background leading to the arraignment of the appellant before the trial court as could be gathered from the record is such that; on 11/8/2021 PW1, an auxiliary police officer was on duty at Mirerani mines gate. His duty was to inspect people going in and out of the mine. In the course, the appellant was found with 202 rolls of cannabis sativa kept in his bag.

The record reveal that PW1 was with Cpl. William from Tanzanian People Defence Forces (TPDF) when they arrested the appellant and they called a police officer who after his arrival the certificate of seizure was prepared. The said seizure certificate was tendered and admitted as exhibit P1.

PW2 the investigator of the case, he also recorded the appellant's cautioned statement which was tendered and admitted as exhibit P2. The record reveals further that, PW2 took the rolls of cannabis sativa to government chemist. The analysis report was tendered and admitted as exhibit P3 while the 202 rolls of cannabis sativa were tendered and admitted as exhibit P4.

PW3 who was the exhibit keeper at Mirerani Police Station, he was handed 202 rolls of cannabis sativa and stored them. PW3 stated that the chain of custody form was used in handling the rolls of cannabis sativa which was tendered and admitted as exhibit P5.

The appellant fended for himself. He denied to have committed the offence which he stood charged. The appellant at all the time he maintained his innocence and stated when his bag was searched, only his clothes were retrieved. He claimed while walking away, he was called back and taken into a room where he was shown an envelope and asked if he knew it.

The appellant denied to know about it, but he was forced to admit that it belonged to him. Then he was taken to the police station where he was forced to sign some papers already prepared.

At the end of the trial the appellant was convicted and sentenced as stated above.

The appellant was aggrieved with the sentence and conviction meted out against him. Hence, he preferred the instant appeal with four (4) grounds of appeal, which can be conveniently reduced into two as follows;

1. *That there was no sufficient evidence to establish the offence.*
2. *That the sentence of thirty years was manifestly excessive.*

When the appeal was called on for hearing, the appellant appeared in person while the respondent was represented by Ms. Anifa Ally the learned state attorney. The appeal was disposed of orally.

When availed a chance to expound his grounds of appeal, the appellant simply adopted the grounds of appeal to form part of his submission. He had nothing further to elaborate.

On the respondent's side, Ms. Ally opposed the appeal entirely. She went on arguing that there was ample evidence to establish the case against the appellant was proved beyond reasonable doubt.

Ms. Ally pointed out that, PW1 proved that the appellant was arrested at Mirerani gate carrying drugs known as cannabis sativa, which were in the

bag he was carrying. She contended that a certificate of seizure was filled in the presence of the appellant and he signed it verifying that the drugs were in his possession.

To bolsters her arguments, she referred to the case of **Pirbaksh Birbade v. Republic**, Criminal Appeal No. 603 of 2020 (unreported) in which the Court of Appeal held that, signing of certificate of seizure implies that the property seized was his.

Ms. Ally further contended that, the evidence of PW1 was corroborated with that of PW2 who interrogated the appellant who admitted to have been found with 202 rolls of cannabis sativa. To this argument she cited the case of **Paulo Maduka & others v. Republic**, Criminal Appeal No. 110 of 2017, where court held that the best evidence in criminal cases comes from the suspect himself.

She contended that the case against the appellant was proved beyond reasonable doubt and the appellant was given chance to defend himself.

Submitting on the second ground regarding the legality of sentence meted out against the appellant, Ms. Ally regarded section 11(1) (b) of the Act, which provides for minimum sentence for a person convicted of such offence under the said provision the sentence is not less than 30 years.

Thus, Ms. Ally maintained that, the sentence imposed against the appellant was according to the law.

The learned state attorney urged the court to dismiss the appeal for lack of merits.

On rejoinder the appellant contended that he was just framed up and was threatened to sign the papers.

Having gone through the records and parties' rival submissions, the issue for my determination is whether the appeal has merits.

In determining the merit of this appeal or otherwise, this being the first appellate court it has the duty to reassess the evidence on record and where it deems necessary to come up with its own findings.

Starting with the first ground of appeal, in which the appellant complains that there was no sufficient evidence to ground his conviction. On the other hand, the respondent argued that the available evidence sufficiently proved the case against the appellant.

Before the trial court, the accused was charged with the offence of unlawful possession of narcotic drugs. It was incumbent upon the

prosecution to prove beyond reasonable doubt that the appellant was found in possession of drug substance namely narcotic drugs.

In the instant matter the findings of the trial court were based on the fact that, the appellant was found in possession of the narcotic drugs for two reasons. There was the certificate of seizure (exhibit P1) and the appellant's cautioned statement (exhibit P2) in which the appellant is said to have admitted to have been found in possession of 202 rolls of cannabis sativa.

This stance of the trial court is shared by the respondent in this appeal.

I have carefully gone through the two documents; I will start with the certificate seizure (exhibit P1). The evidence available on record is to the effect that, PW1 accompanied by Cpl. William from TPDF were able to arrest the appellant and later called a police officer who arrived at the scene and prepared the seizure certificate and thereafter PW1 and the appellant signed the document.

It is also on record that, the name of the police officer who was called at the scene was never disclosed. However, looking at the said seizure certificate, it was prepared by Cpl. William from TPDF, but he was never called to testify before the trial court.

I have also noted that, when the prosecution sought to tender the seizure certificate, the appellant objected against its admission for the reason that he did not sign the same. Nonetheless, the trial court simply stated the objection was noted and proceeded to admit the same as the exhibit.

Now with the objection that the appellant did not sign the certificate of seizure, the prosecution bore the burden to produce in court the other two witnesses who were the unnamed police officer and Cpl. William from TPDF to corroborate PW1's evidence. Failure of which the trial court should have drawn an adverse inference to the prosecution evidence. See the case of **Esther Aman v. Republic**, (Criminal Appeal 69 of 2019) [2020] TZCA 1907 (17 December 2020.

I have also noted the manner in which the form of the chain of custody was maintained in respect of the seized items suspected to be narcotic drugs. In the case of **Paulo Maduka & 4 others v. Republic** (supra), the court observed thus;

> *By "chain of custody" we have in mind the chronological documentation and or/paper trail, **showing the seizure**, **custody**, **control**, **transfer**, analysis and disposition of evidence, be it physical or electronic. The idea behind*

recording the chain of custody it is stressed, it to establish that the alleged evidence is in fact related to the alleged crime. [Emphasis added].

In the instant matter, looking on the manner of handling of 202 rolls of cannabis sativa was done leaves some serious doubts. At the scene where the purported drugs were seized, it is indicated that it was Cpl. William from TPDF who seized the said drugs. The said CPL William was never called to testify.

It was not be established after he had seized the drugs to whom he handed the same. Looking on PW3 he, testified that he was the exhibit keeper at Mirerani Police Station. On 11/8/2021 he was called at the said police station by a police officer in which he was handed 202 rolls of cannabis sativa. It is unfortunate that the name of the police officer who handed the 202 rolls to PW3 was not disclosed.

The chain of custody it can be proved by oral account or by paper trail, what matters most is that the chain of custody should not be broken. As decided in the case of **Sophia Kingazi v. Republic**, Criminal Appeal No. 273 of 2016 TZCA, at Arusha (unreported), where the court emphasized on having unbroken chain of custody of the exhibit.

It is noteworthy that PW3 in his testimony, he told the trial court that he was handed 202 rolls of cannabis sativa, but on cross examination he stated he did not know if the exhibit was cannabis sativa. Hence, looking in totality on the manner the seized drugs were handed, it casts some serious doubts. Had the trial court took it into consideration, it would have arrived into a different conclusion.

In this case, the records clearly show that there was no chronological oral account on the handling of drugs which is the essential ingredient of the offence. Also, the paper trail (Exh. P5) did not show how the drugs (Exh. P4) exchanged hands from one person to another until it was tendered before this court. See the case of **Anania Clavery Betela v. Republic**, Criminal Appeal 355 of 2017) [2020] TZCA 245 (22 May 2020).

In this matter since there was the broken chain of custody, this creates a doubt if Exh. P4 is the same drugs that were seized from the scene to be the same tendered before the court. Again, in the manner of dealing with the certificate of seizure (Exh. P1) when it was tendered before the court leaves a doubt which required the officers involved with it to appear and testify before the court, but for no apparent reason they never appeared to testify before the court.

All these anomalies must be resolved in favour of the appellant. Therefore, certificate of seizure (Exh. P1), chain of custody form (Exh. P5) and the drugs (Exh. P4) are expunged from the records of the trial court.

I have also considered the purported cautioned statement of the appellant which was admitted as exhibit P2. The said cautioned statement was recorded by PW2 when the appellant was already in custody. Looking at it, one could not establish as to when exactly the same was recorded. At the beginning it indicates to have been recorded on 11/08/2021, but on the second page it is shown to have been recorded on 12/8/2021.

When the prosecution sought to tender the same, the appellant objected to it by saying "it is not true" but the trial court overruled the objection stating that it was not a valid objection. I am of the settled view had the trial court availed the appellant chance to expound on his objection the trial court may have come with the different findings.

It is for foregoing analysis I find that, in the absence of drugs which is essential ingredient of the offence the appellant stood charged with leaves a lot of doubt on the prosecution evidence. It is for that reason I find the case against the appellant was not proved beyond reasonable doubt. Hence, the first ground of appeal is with merits and the same is allowed.

Determination of the first ground of appeal sufficiently disposes of the appeal before me. I proceed to quash the conviction and set aside the sentence of 30 years meted against the appellant. I further order the appellant be released forthwith from prison unless he is held for other lawful cause.

It is so ordered.

Dated at **Babati** this 19th September 2023.

G. N. BARTHY

JUDGE

Delivered in the presence of the appellant in person and Ms. Anifa Ally learned state attorney for the respondent.