

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB REGISTRY OF KIGOMA)**

AT KIGOMA

DC CRIMINAL APPEAL NO. 10 2023

**(Arising from DC Criminal Case No. 143 of 2023 at Kasulu
District Court)**

TWALIBU HUSEIN SHULISE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: 19.09.2023

Date of Judgement: 29.09.2023

JUDGEMENT

MAGOIGA, J.

The appellant, **TWALIB HUSEIN SHULISE** (together with DEDAN WILSON not in this appeal) were on 22nd day of March, 2023 arraigned in the District Court of Kasulu (trial court) with one count of unlawful trafficking of narcotic drugs contrary to section 15A (1) 2(a) of the Drugs Control and Enforcement Act, [Cap 95 R.E.2019].

The particulars of the offence as per charge sheet were that, on 15th day of March, 2023 at Kanazi area within Kasulu District in Kigoma region, the appellant was found unlawfully trafficking 12.65 kilogrammes of cannabis sativa commonly known as bhang.

When the charge was read over and explained to the accused, the accused entered the plea guilty by replying that "Ni kweli nilikutwa nikiwa



nasafirisha madawa ya kulevya aina ya bangi. Sikuwa na kibali kilichoniruhusu kuwa na madawa hayo”

Basing on the accused’s own plea of guilty in the count, the court proceeded to convict him and sentenced him to serve 5 years imprisonment.

Aggrieved by both conviction and sentence, the appellant preferred this appeal in this court armed with five grounds of appeal faulting the trial court findings, couched in the following language, namely:

- 1. That the trial court erred in law and fact by convicting and sentencing the appellant by considering the plea of guilty which was equivocal and ambiguous;*
- 2. That the trial magistrate erred in law and fact by convicting and sentencing based on appellant's own plea which was equivocal due to the fact that the appellant was beaten and tortured by the police and forced to admit the charge he was charged before he was brought to the court. That could be unjust to allow the guilty plea to stand due to pressure he experienced and according to the principal which state that the defendant making his own decision must be free from pressure of the circumstances in which he is forced to make his choice. In order to prove that I attach with the*




- copy of police form No.3 which shows how much the appellant was injured by the police as annexure "A" to form part of this petition;*
- 3. That the case was poorly prosecuted as the prosecution did not produce to the court the alleged narcotic drugs said to be unlawfully trafficked by appellant;*
 - 4. That the conviction was erroneously based on equivocal plea;*
 - 5. That the guilty of the appellant was not proved beyond reasonable doubt as required by the law.*

On the strength of the above grounds, the appellant prayed this appeal be allowed, set aside conviction and sentence and set him free.

When this appeal was called on for hearing through video conference, the appellant was present and unrepresented, while the Republic was represented by Ms. Rehema Mponzemenya, learned State Attorney.

When the appellant was called on to argue his appeal, he preferred to hear the State Attorney first and will reply thereafter.

Ms. Mponzemenya when rose to argue readily told the court that they strongly oppose this appeal for want of merits. The learned Attorney equally told the court will argue together grounds Nos.1, 2, 4 and 5 which grounds boils down to the appellant's own plea. And ground 3 will be argued separately.



Arguing the four grounds together the learned Attorney told this court that when the appellant was arraigned in the trial court, the appellant's plea taken was unequivocal and unambiguous and that even when facts were read to the appellant he equally admitted to understand and that were all truth.

According to the learned Attorney, much as the appellant was convicted by his own plea, and which plea, according to her was unambiguous and unequivocal, then, this kind of appeal is barred under section 360(1) of the Criminal Procedure Code, [Cap 20 R.E.2019] unless the appeal was against sentence. It was further argument of the learned that, this appeal is not against sentence but on merits of the plea. The learned Attorney referred this court to the cases of **Arick Genadio and another Vs. Republic, Criminal Economic Case No. 1 of 2020 HC (BUKOB) (Unreported)** and **Michael Adrian Chaki Vs. Republic, Criminal Appeal No. 399 of 2019 CAT (DSM) (Unreported)** of which interpreted section 360 and confirmed no appeal shall lie against one's own plea.

On the above reasons, the learned Attorney in strong terms urged this to find that the plea of the appellant was unequivocal and unambiguous and proceed to dismiss all these grounds for want of merits.




On the third ground that no exhibit was tendered to prove the offence charged, it was the reply of the learned Attorney that when the accused admits the offence charged, it is not a legal requirement to tender exhibits. In support of this argument, the learned Attorney referred this court to the case of **Frank Mliyuka Vs. Republic, Criminal Appeal No. 404 of 2018 CAT (Iringa) (Unreported)** in which it was held that when an accused person admits the commission of the offence is not a legal requirement to tender exhibits.

According to the learned Attorney, guided by the above legal stance, this ground too is without merits and consequently asked this court to dismiss this entire appeal for being unmerited.

The appellant had nothing useful to reply than asking that his grounds be considered alongside with the evidence on record. According to the appellant no proof of what he was charged for and consequently prayed for his release after allowing his appeal.

Having carefully considered the rivalling arguments of the parties and read the trial court record and read the case law cited in opposing this appeal, I find that in this appeal, this court has two issues to answer, namely: **one**, whether the appellant's plea subject of this appeal was unequivocal or not; and **second**, if when the accused admits the commission of the



offence, still evidence is required to prove his guilty, notwithstanding, his admission?

Starting with the first issue whether the appellant's plea was equivocal or not. I will leave the record of the trial court to speak when the charged was read over and explained to the appellant in a language he understands. The appellant had this to say, I quote:

"ni kweli nilikutwa nikiwa na nasafirisha madawa ya kulevya aina ya bangi. Sikuwa na kibali kilichoniruhusu kuwa na madawa hayo."

The ball did not end there, but when the facts of the offence were read to the appellant, he replied, I quote that:-

" I have heard and understood the facts. All what is stated is all the truth."

From the above excerpts, with due respect to the appellant, I found that, his plea was unequivocal and unambiguous in all respect. In my considered opinion, all what the appellant raised to his grounds of appeal as to his plea are but an afterthought but futile exercise on his part.

That said and done without much ado, the 1st , 2nd ,4th and 5th grounds argued together are hopelessly unmerited and as such dismissed.

This takes me to the last ground 3, on whether when an accused person admits the commission of an offence charged, evidence and tendering of

exhibits is required to prove the charge and failure of which the offence is considered not proved. The appellant had nothing to submit on this point. The learned Attorney submitted that it is not a legal requirement. Having read the cases referred on this point, it is my considered opinion that except for murder case which despite an admission but evidence has to be tendered, the rest of the criminal offences, I agree with the learned Attorney that it is not a legal requirement when an accused admits an offence to tender exhibits.

With that note, therefore, I find this appeal, barred and wanting in merits and proceed to dismiss it in its entirety.

It is so ordered.

Dated at Kigoma this 29th day of September, 2023.



A handwritten signature in blue ink, consisting of a series of vertical strokes followed by a horizontal line and a small flourish.

S.M. MAGOIGA
JUDGE
29/09/2023