

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA**

CRIMINAL APPEAL NO. 53 OF 2023

*(Originating from Criminal Case No 52 of 2023 before the District Court of Arusha at
Arusha)*

ZAINABU SINGANO ALLYAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

11th October & 08th November, 2023

KAMUZORA, J.

The Appellant was aligned before the district court of Arusha for the offence of trafficking narcotic drugs contrary to section 15A (1) and (2) of the Drugs Control and Enforcement Act, Cap 95 R.E 2019 as amended by section 19 (b) of the Written Laws (Miscellaneous Amendment) (No.5) Act, 2021. When the charged was ready to her, she responded that it was true. The trial court entered plea of guilty to the charge and proceeded on recording facts. The Appellant responded to the facts the trial court made a conclusion the Appellant pleaded guilty to the charge and facts

thus proceeded on convicting and sentencing the Appellant to serve thirty (30) years imprisonment.

Aggrieved, the Appellant preferred this appeal on the following grounds:

-

- 1. That, the learned trial magistrate erred in law and fact by convicting and sentencing the Appellant for the offence she was not charged with.*
- 2. That, the learned trial magistrate erred in law and in fact by convicting and sentencing the Appellant without considering the evidence of the Appellant to be proved before the court*
- 3. That, the trial magistrate erred in law and fact by convicting the Appellant without considering her right to defend her case.*
- 4. That, the trial magistrate erred in law and in fact by convicting the Appellant for the offence which the prosecution side did not prove beyond reasonable doubt.*

When the matter was called for hearing, Mr. Hassan Salum, learned advocate appeared for the Appellant while Mr. Alawi Hassan, learned State Attorney appeared for the Republic. Parties opted to argue the appeal by way of written submissions and the both complied to the schedule.

Submitting in support for appeal, the counsel for the Appellant argued that the accused statement during plea was contradictory and could not be interpreted to mean that she pleaded guilty to the offence. That, the Appellant's statement did not complement particulars of the

charge. That, the Appellant's rejection on the number of bundles shows that the facts were not admitted hence the prosecution side was bound to present evidence to prove the case.

The Appellant counsel added that the Appellant's plea was imperfect and equivocal. He referred the decision in the case of **DPP Vs. Paul Reuben Makujaa**, (1992) TLR, 2 and insisted that since facts were not clearly admitted, the prosecution was bound to prove those facts with evidence. Referring the particular of offence in the charge sheet, the counsel for the Appellant submitted further that there was no proof if what was found in possession of the Appellant were actually prohibited plants. That as the prosecution side failed to tender a report from government analyst in respect of the seized plants during proceedings, they failed to establish that what was seized was indeed narcotic drugs.

The counsel for the Appellant also submitted that the quantity of drugs stated in the charge sheet is different from what was admitted by the Appellant, meaning that the Appellant was convicted for the offence he was not charged with. He referred the decision by Samatta. J, in **Laurence Mpinga Vs, Republic** [1983] TLR 166 on the circumstances under which conviction of plea of guilty can be challenged. He maintained that the Appellant's plea was equivocal hence prayed this court to allow the appeal by quashing and setting aside the trial court's judgement.

In reply, the learned State Attorney argued that the Appellant admitted before the trial court that she was found in possession of narcotic drugs namely Khat edulis commonly known as mirungi contrary to section 15A (1) and (2) of the Drugs Control and Enforcement Act, Cap 95 R.E 2019 as amended by section 19 (b) of the Written Laws (Miscellaneous Amendment) (No.5) Act, 2021. That, such admission can be seen at page 1 and 2 of the proceedings of the trial court. That, Appellant also admitted to all facts forming offence but only disputed the quantity as she claimed the same to be 4 bundles instead of 10 bundles.

Referring the case of **Michael Adrian Chaki Vs, Republic**, Criminal Appeal No. 399 of 2019, the learned State Attorney argued that the trial court complied to the directives of the court of appeal that in recording the accused plea the court is required to ensure that the accused respond to every fact read over to him. That, the trial court also complied with section 288 (2) of the CPA and the Appellant's plea was unequivocal. He referred the case of **Republic Vs. Yonsan Egau and others**, (1942) EACA, 67 and the case of **Phillipo Faustine @ Chitembele Vs. Republic**, Criminal Appeal No. 666 of 2020 on what constitute plea of guilty.

The learned State Attorney explained that when the charge was read to the Appellant, she responded that it is true. That her response

appears to be plea of guilty and since the Respondent only disputed the quantity but admit all other facts, then her plea is mostly likely to be equivocal. He invited this court to issue an order for re-trial for interest of justice in considering the principle laid down in the case of **Fatehali Manji Vs. Republic**, (1966) EA 341. Reference was also made to the court of appeal decision in **Ezekiel Hotay Vs. The Republic**, Criminal Appeal No. 300 of 2016. In concluding, the learned State Attorney maintained that the trial court properly convicted and sentenced the Appellant for the offence she was charged with. He however prayed for this court to order for trial denovo for interest of justice.

Upon assessing the grounds of appeal and submissions from both sides, the pertinent issue in this matter is whether there was unequivocal plea of guilty to the charge. This will result to the determination of all grounds of appeal in unison. In order to assess that issue, I made a thorough perusal to the trial court proceedings and judgment there to.

It is undisputed fact and as well depicted from the charge sheet that the Appellant was charged for trafficking narcotic drugs under the provision of section 15A (1) and (2) of the Drugs Control and Enforcement Act, Cap 95 R.E 2019 as amended by section 19 (b) of the Written Laws (Miscellaneous Amendment) (No.5) Act, 2021. The particulars of the offence read;

"ZAINABU SINGANO ALLY, on the 30th day of March 2023, Sokoni One in Ungalimited area, within the city, District in Arusha Region, was found trafficking in Narcotic drugs, namely Khat Edulis, popularly known as "Mirungi", weighing 3.05 kilograms."

The proceedings shows that the charge was read over and explained to the accused/Appellant herein and she responded "It is true". The trial court entered a plea of guilty to the charge The prosecuting attorney informed the court that the investigation was complete and prayed to proceed on reading facts forming the offence. For purpose of clarity, I will reproduce the said facts;

"That the particulars of the offence charged are as per charged sheet where by it is alleged that on 30/03/2023 at 18:00hours at Sokoni One Unga limited a police man F.2596 Detective Sergeant Abdallah of Arusha Central Police Station while on duty with his co-policeman in a patrol routine they suspected two young men who run away from the accused house. The policemen also drew suspicion to the owner of the house so they asked her to conduct search in the presence of her neighbour one Modest Thomas and upon search in that house a pocket was seen packed with 10 bundles of khat edulis commonly known as mirungi. Certificate of seizure was filled, the accused sealed it with her thumb signature then the accused and the seized drugs were taken to Arusha central police station and the seized drugs were handled to exhibit custodian J.1193 PC Datan through PF.16. That is all."

When asked to respond to the facts, the Appellant replied;

"All facts are true but about 10 bundles its not true it was only 4 bundles."

The court proceeded to record as follows:

"The accused has pleaded guilty to the charge and confirmed the facts narrated to her, for this fact then this court finds her guilty of the charged offence and convicts accordingly."

From the above captured proceedings, this court found incompatibility between the charge sheet and facts read in support of the charge. One, while particular of the offence in the charged sheet shows that the accused was found trafficking 3.5 kilograms of Khat Edulis, popularly known as "Mirungi" facts in support of the charge reveals that the accused was found with 10 bundles of khat edulis commonly known as mirungi. There is no fact revealing that the 10 bundles referred in the fact form 3.5 kilograms referred in the charge sheet. Indeed, there is different in the quantity seized hence, the fact does not support particulars of the offence in the charge sheet.

Two, the Appellant's response to the facts qualified the number of bundles read to her. The Appellant's rejection on the number of bundles could not be interpreted to mean that she admitted the facts. The trial court was therefore wrong to put words in her mouth and concluding that the accused pleaded guilty to the charge and confirmed the facts narrated

to her. Having qualified the quantity, the accused's plea became equivocal and the prosecution side was bound to submit evidence to prove the quantity.

Three, there is no facts revealing that the allegedly seized substance were examined and proved to be narcotic drugs. It must be noted that, the offence of trafficking in narcotic drugs attract grave sentence thus, the court must be satisfied that what was seized was real proved to be narcotic drugs. Where there is no clear explanation as to how the seized substance were concluded to be narcotic drugs like in the circumstance of this case, the court must caution itself before convicting the accused based only on the accused statement that 'it is true'. Such blanket statement with no explanation cannot safely be relied upon to conclude that all particulars of offence are true and correct unless the accused express in her own words what she was admitting.

As well pointed out above, the facts read to the accused were qualified thus not response to the charge 'it is true'. If we assume that by responding 'it is true' she was admitting to be found with 3.5 kilograms of mirungi, the facts read to her does not support such plea because the quantity was stated to be 10 bundles and not 3.5 kilograms. A blanket admission to the facts was made in her response as the accused did not directly mention that she was found with mirungi. It was expected of the

prosecution to satisfy the court that the seized substance were narcotic drugs. In other words, since the prosecution reported to the court that investigation was complete, it was expected for them to produce the certificate of seizure along with a report from government chemists confirming that the seized substance were narcotic drugs irrespective of the existence of the plea of guilty.

In that regard, I agree with the submission by the counsel for the Appellant that the plea was equivocal hence, could not be relied upon in convicting the Appellant. The court would have entered plea of not guilty and proceed on receiving evidence in need of proof of the charge against the Appellant. I therefore proceed on quashing the proceedings and setting aside the conviction and sentence passed against the Appellant. The case file be remitted to the trial court for the trial court to record the accused's plea afresh and proceed with the trial of the case. The appeal is therefore allowed to the extent above explained.

DATED at **ARUSHA** this 08th Day of November, 2023



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora".

D.C. KAMUZORA

JUDGE

