

UNITED REPUBLIC OF TANZANIA
JUDICIARY
HIGH COURT OF TANZANIA
BUKOBA SUB REGISTRY
AT BUKOBA
CRIMINAL APPEAL NO. 77 OF 2023

*(Arising from Criminal Case No. 30 of 2023 of Missenyi District Court at Missenyi before Hon. Y.C.
Myombo- PRM)*

ANITHA PASTORY ----- **APPELLANT**

VERSUS

THE REPUBLIC ----- **RESPONDENT**

JUDGMENT OF THE COURT

Date of last Order: 20/02/2024

Date of Judgement: 08/03/2024

BEFORE: G.P. MALATA, J

The appellant, **Anitha Pastory**, was charged for being found in unlawful possession of 4.38 kilograms narcotic drugs commonly known as Bhangi c/s 15A (1) and 2 (c) of the Drug Control and Enforcement Act, Cap.95 R.E.2019. The appellant was convicted and sentenced following plea of guilty before the District Court of Missenyi. She was sentenced to serve thirty (30) years imprisonment.

Upon being convicted under sentenced, the appellant came to this court lamenting against decision of the District Court of Missenyi.

The appellant approached this court armed with eight (8) grounds of appeal. These are;

1. That, the charge sheet was defective that did not qualify to the statutory requirements of the law,
2. That, the trial magistrate court erred both in law and fact to upheld the conviction and sentence by basing on an equivocal admission adduced by her,
3. That, the trial court magistrate caused the bad evidence recording where the said 4.38Kg of bhang, Government chemist report, weight measure report, chain of custody, certificate of seizure and handling certificate were not tendered before the trial Magistrate contrary to section No. 34B (5) of Tanzania Evidence Act Cap. 6 R.E. 2019,
4. That, the trial court magistrate proved personal weakness by completely failure to attend and admit the Government Chemists report to prove if it was bhang an issue disqualifying the whole delivered judgment,
5. That, the weight of the said bhang was not proved as no any documentary evidence to prove the same,

6. That, the trial court erred both in law and fact by reaching the decision on mere words as where the said bhang was not tendered and destroyed as the law requires,
7. That, the sentence premised to the appellant was improper,
8. That, the case against the appellant was not proved beyond the reasonable doubt,

However, the appellant is layperson just decided to put everything in bucket for the court to choose. Since, the appellant pleaded guilty then the grounds for appeal is subjected to section 360 (1) of the Criminal Procedure Act, Cap.20 R.E.2022 which reads;

"An appeal shall not be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence"

On the strength of that provision of the law and bearing in mind that, there was no trial, the discussion will be mainly centered on parameters stated in section 360 (1) of the Criminal Procedure Act. However, before offering the said section, checklist be done on process of arriving to plea of guilty, thus unequivocal plea of guilty.

In that regard, this court will only deal with ground of appeal **NUMBER TWO.**

"That, the trial magistrate court erred both in law and fact to uphold the conviction and sentence by basing on an equivocal admission adduced by her"

On the hearing date, Ms. Matilda Assey learned State Attorney appeared for the Republic whereas the appellant appeared in person.

Arguing in support of the said ground of appeal, the appellant had nothing much to submit save for the fact that, she did not plead to the offence.

In reply thereof, Ms. Matilda Assey learned State Attorney submitted that, the plea was unequivocal. To bolster her argument, she referred this court to section 228 (1) and (2) of the Criminal Procedure Act, Cap.20 R.E.2022 which stipulates for conditions to be complied with.

In the present charge, the accused requested the court to remind on the charge and the court reminded her and wrote the response from the accused. However, the record does not show if the court asked the accused to plead thereto in terms of section 228 of the Criminal Procedure Act, Cap.20 R.E.2022. Further, the record reads that, she pleaded guilty to the offence that, she was found with the said bhang 4.38kg. The court did not enter plea of guilty, however, plea of guilty is reflected at the facts. She thus cemented that, it was enough to convict the accused.

Having gathered parties' concern in the present appeal, this court has established one pertinent issue to be decided in this case. That is;

Whether the appellant was convicted upon his own unequivocal plea of guilty

It is my settled view that, before looking the parameters within which the appellant can travel through in challenging sentence entered upon plea of guilty, the court must satisfy itself that, the plea was unequivocal, thus binding to the appellant as couched under section 360 (1) of the Criminal Procedure Act. If it will be established that, the plea was equivocal then, conviction will be declared illegal thus incapable of yielding valid sentence. In similar vein, it cannot bar the appellant from challenging its equivocality under section 360 (1).

Having so said, I now start highlighting some conditions for unequivocal plea of guilty as propounded by the court of appeal. In the case of **Michael Adrian Chaki v. R, Criminal Appeal No. 399 of 2017 (unreported)**, the Court stated that there cannot be an unequivocal plea on which a valid conviction may be founded unless these conditions are conjunctively met:-

"1. The appellant must be arraigned on a proper charge. That is to say' the offence, section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law;

2. The court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with, otherwise injustice may result;

3. When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228(1) of the CPA;

4. The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged;

5. The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear;

6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged"

The court interpreted section 228 (1) and (2) of the Criminal Procedure Act, Cap.20 R.E.2022. The section reads;

(1). The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

*(2) Where the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses **and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary.***

Echoing from the above cited provision of law and as stated in the court of appeal, for unequivocal plea of guilty to be valid, the court's record must demonstrate that; **one**, there was valid charge laid against the accused, **two**, the court did cause the charge be read over and explained to the accused, **three**, the record must indicate that accused was asked and called upon to plead thereto, **four**, the plea must be recorded nearly to the words used by the accused, **five**, the court must record and enter plea of guilty to the offence by the accused, **six**, court must cause the facts particularizing the offence to be read over and explained to the accused, **seven**, accused must be called upon to plead thereto **eight**, court must record the plea of guilty to the facts by the accused, **nine**, court must enter conviction, **ten**, court must record aggravating factors and mitigation and **eleven**, court must enter sentence according to the law.

In the present case, the records at pages 9-10 of the proceedings

PP: *the matter is coming for hg, I have five witnesses, I am ready to proceed.*

Accused: *You honour I pray my charge to be reminded to me.*

Court: *prayer granted the charge reminded to the accused person who pleaded*

Accused: *It is true your honour, I was found with the said with bhang 4.38kg.*

Accused signed

PP signed

Facts

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- *That today on 09/05/2023 has prayed for her charge to be reminded to her and when reminded to her she pleaded guilty*

Accused: *I admit all the facts read to me your honour*

Accused: signed

Sincerely speaking what transpired was against the procedure for hearing criminal cases. As per the above court record, it is clear that, the accused asked the court to remind her on the charge as if it was not a duty of the court to do so at the commencement of hearing. In return, it is recorded that,

"Court: prayer granted the charge reminded to the accused person who pleaded"

Looking at the procedure adopted by the court from the start of what is termed as plea of guilty to the sentencing stage, it is clear that, it had nothing to do with discharging of requirement of section 228(1) of the Criminal Procedure Act. While interpreting section 228 (1) of the Act, the Court of Appeal in the case of **Naoche Ole Mbile V. Republic** (1993) TLR 253 stated on duty of the court and effect of non-compliance of the said section. The court held that;

- (i) *One of the fundamental principles of our criminal justice is that at the beginning of a criminal trial the accused must be arraigned, i.e., the Court has to put the charge or charges to him and require him to plead"*
- (ii) *Non-compliance with the requirement of arraignment of an accused I person renders the trial a nullity"*

In that regard, it is a duty of the court to remind the accused on the charges arraigned against, certainly the duty was not executed save that the accused asking to be reminded on the charges. The court's record does not demonstrate that; **one**, the charge was read over and explained to the accused in the language she understood, **two**, the accused was asked to plead to the charge arraigned against her, **three**, the plea of guilty was recorded by the court immediately after

charge having being read to the accused, **four**, accused was called upon to enter plea of guilty on the facts read over and explained to her.

In short, the gist of section 228 supra and principles propounded in the case of **Michael Adrian Chaki v. R, Criminal Appeal No. 399 of 2017** were not complied with.

On the strength of the above principles of law, it is clear that, there was equivocal plea of guilty and the appellant was convicted and sentenced upon contrary to law.

To that end, I am in disagreement by Ms. Matilda Assey learned State Attorney that there was unequivocal plea of guilty.

Having found that, the plea was equivocal thus invalid in law, this court proceeds to allow the appeal, quash conviction and set aside the sentence imposed. Further, I order for immediate released of the appellant, unless lawful held for other offences.

IT IS SO ORDERED.

DATED at **BUKOBA** this 8th March, 2024.


G.P. MALATA
JUDGE
8/03/2024

JUDGMENT delivered at **BUKOBA** this 8th March, 2024 in the presence of Appellant and Ms. Matilda Assey learned Sate Attorney for the Republic.


G.P. MALATA
JUDGE
8/03/2024

