

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA SUB - REGISTRY)

AT SONGEA

DC. CRIMINAL APPEAL NO. 45 OF 2023

SAIDI MOHAMED LIKOVANGA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Date of Last Order: 27/11/2023

Date of Judgment: 19/01/2024

U. E. Madeha, J.

To begin with, the Appellant who is none other than; Said Mohamed Likovanga, was arraigned before the District Court of Tunduru for the offence of unlawfully cultivating prohibited plants contrary to section 11(1)(a) of the *Drug Control Enforcement Act* (Cap. 95, R. E. 2019). The particulars of the offence were that on 3rd, March 2023, at Ligoma Village within Tunduru District in Ruvuma Region, the Appellant was found cultivating prohibited plants, to wit; one hundred (100) plants of cannabis sativa, commonly known as Bhang.

When he was arraigned before the trial Court, the Appellant pleaded guilty to the charge laid before him. As a result, the trial Court convicted and sentenced him to serve thirty (30) years imprisonment. Dissatisfied with both conviction and sentence, the Appellant has preferred this appeal and in his petition of appeal he has raised seven (07) grounds of appeal, namely;

- 1. That, the trial Court erred in law and in facts by convicting the Appellant relying on his plea of guilty while the plea was equivocal.*
- 2. That, the trial Court erred in law and in facts by convicting the Appellant because there was variance between the charge sheet and the facts of the case given by the prosecution during Preliminary Hearing.*
- 3. That, the trial Court erred in law and in facts by convicting the Appellant because the facts given by the prosecution during preliminary hearing depict that there were other accused persons who were found with the prohibited plants.*
- 4. That, the trial Court erred in law by failing to comply with the legal requirements provided under section 192 of the Criminal Procedure Act (Cap. 20, R. E 2022), as a result the Appellant was wrongly convicted basing only on the preliminary hearing.*
- 5. That, the trial Court erred in law and in facts to convict the Appellant relying on Exhibit P1 while there was no examination Report from the Government Chemist to prove that those plants were cannabis sativa.*

6. *That, the trial Court erred in law and in facts by convicting the Appellant basing on exhibit P2 which was filled and signed at Tunduru Police Station instead of being filled and signed at the scene of crime.*
7. *That, the trial Court erred in law and in facts in convicting the Appellant relying on exhibit P3 which was involuntarily recorded.*

At the hearing of tis appeal, the Appellant appeared in person while the Respondent was represented by Mr. Frank Sarwart. From the outset, the Appellant submitted that the first, second and the seventh grounds of appeal will be argued jointly and he prayed to abandon the third ground of appeal.

The Appellant started submitting on the fourth ground of appeal, which states that; the District Court failed to comply with the requirements of section 192 (2) & (3) of the *Criminal Procedure Act* (supra). As far as the seventh ground of appeal is concerned, he argued that the Government Chemist's report was crucial to prove that the plants were bhang.

On the sixth ground of appeal, he submitted that exhibit P2 was filled and signed at the Police Station but the law requires to be filled and signed at the scene of crime. He added that, exhibit P3 which is the cautioned

statement was recorded without his will since he was beaten before being recorded.

On the other hand, Mr. Frank Sarwat the State's Attorney representing the Republic/Respondents submitted that the Appellant was charged and convicted for the offence of unlawful cultivation of illegal plants under section 11(1) (a) of the *Drugs Control and Enforcement Act* (supra) and sentenced to serve thirty (30) years of imprisonment. Notably, he argued that; the Appellant's petition of appeal has seven (07) grounds of appeal but at the hearing of this appeal he abandoned the third ground of appeal. He went on stating that the Appellant consolidated the first, second and seventh grounds of appeal and argue them jointly.

In his submission, Mr. Sarwart opposed this appeal and argued that the plea of the Appellant was not equivocal. He invited this Court to take into consideration the provision of section 228 (1) & (2) of the *Criminal Procedure Act* (supra) which gives guidelines on the plea of guilty. He stated that basing on the proceedings of the trial Court, it is crystal clear that there was compliance with the requirement of the law in plea taking since the Appellant admitted the charge and when the facts of the offence were given by the prosecution side the Appellant also admitted them, thus

his plea of guilty was unequivocal and did not need to be appealed. He cited the case of **Frank Mlyuka vs. Republic**, Criminal Appeal Number 404 of 2018, where the Court of Appeal of Tanzania adopted the decision made in the case of **Laurent Mpinga vs. Republic** (1983) TLR 166, in which it was stated that, when an accused person on his own plea of guilty, may appeal against conviction to the higher court on the following grounds: *Firstly*, that even taking into consideration of the admitted facts, was imperfect, ambiguous or unfinished, and for those reasons, the lower court erred in law in treating it as a plea of guilty. *Secondly*, he pleaded guilty as a result of a mistake or misapprehension. *Thirdly*, the charge led at his door disclosed no offence known to law. That basing on the circumstances, based on only the admitted facts, he could not, in law, have been convicted for the offence charged.

He emphasized that section 360 (1) of the *Criminal Procedure Act* (supra) prohibits an appeal in cases where the accused person was convicted on his plea of guilty except as to the extent or illegality of the sentence and he prayed for the first and second grounds of appeal to be dismissed.

On the fourth ground of appeal, Mr. Sarwart argued that the Appellant was not correct by stating that the trial Court erred in law and in fact by not considering the provision of section 192 (2) and (3) of the *Criminal Procedure Act* (supra) which provides for the procedures to be taken where the accused person pleads not guilty. In that case, he argued that there was no injustice done to the accused person.

On the fifth, sixth and seventh grounds he argued that the conviction and sentence given by the trial Court were based on the accused's own plea of guilty and not on the exhibits tendered by the prosecution side. He added that, even if exhibits P1, P2 and P3 would have not tendered and received by the Court, the Appellant would have been convicted on his own plea of guilty. He made reference to the case of **Frank Mlyuka** (supra), page 15, in which the Court adopted the decision made in the case of **Machiya Barua vs. Republic**, Criminal Appeal Number 105 of 2015 (unreported), in which the Court clearly stated that, it is not a legal requirement to tender an exhibit where the accused pleads guilty to the offence he stands charged with. Lastly, he stated that, this appeal has no merit and he prayed for this Court to dismiss it and the conviction and sentence meted by the trial Court be upheld.

As far as I am concerned, I will start with the first ground of appeal and the fifth, sixth and seventh grounds of appeal will be consolidated and be dealt together because they all relates to the issues of tendering exhibits.

To begin with the first ground of appeal on whether the plea of guilty made by the Appellant before the trial Court was equivocal, I will start by explaining the meaning of the term an equivocal plea of guilty. An equivocal plea of guilty, suggests some level of uncertainty or ambiguity in the admission of guilty. It is a fact that, the accused may express guilty, but with reservations, conditions, or some element of doubt regarding their culpability.

There are some key elements that may suggest that the plea is equivocal. **First**, the use of conditional terms or clauses in the admission of guilty can indicate equivocation. For instance, if the accused says, "I plead guilty if..." or "I'm guilty, but only under the condition that..." however. **Second**, the expression of doubt or statements that expresses doubt or uncertainty about the accused's own guilty, such as "I think I might be guilty" or "I'm not entirely sure, but I'll plead guilty. **Third**, limited admission occurs; it is worth considering the fact that; if the appellant only

admits partial guilty or acknowledges guilty for certain elements of the charges while disputing others, it may suggest an equivocal plea. Again, in the context of accepting half of the facts or an ambiguous plea of guilty, you will see that the Appellant must be unclear. **Fourth**, qualifying statements. Qualifiers like "may be," "perhaps," or "to some extent" can introduce ambiguity into the admission of guilty, indicating that the appellant is not fully committed to the plea. If there were uses of qualified statements, as will be explained below, it would be an unequivocal plea of guilty, but these qualified statements are not present in this case, making the plea of the accused unequivocal. **Fifth**, the external factors such as external pressures or circumstances that might have influenced the plea of guilty such as coercion, fear, or other factors. The Appellant must prove that there was use of force, especially when he was writing his cautioned statement.

In the present appeal, I have gone through the trial Court records to find if the Appellant was bullied. Surprisingly, I have noticed that he expressed himself well using the Swahili language; a language that he is well acquainted with and stated that; *'ni kweli nililima bhangi'*. In such circumstances, I am of the view that the Appellant had a good

understanding of what he pleaded or admitted. Also, the trial Court records does not show that there was an expression of doubt, that is to say that; he pleaded guilty without lawful qualification, and his plea of guilty did constitute the offence charged of being found unlawful with the cannabis sativa plant, popularly known as 'bhang'. Therefore, I believe and I am of the view that the Appellant's plea was unequivocal and the conviction meted against him was proper. The case would have been ordered to be heard in full trial if he would have denied one of the facts.

In examining the equivalent plea of guilty it's crucial to carefully assess the language, context and demeanor of the Appellant to determine the nature of plea made by the Appellant. To the best of my knowledge, I have examined the language used, other factors elaborated above and the submission made by the Respondent's State Attorney and found that the plea of guilty was unequivocal. That is to say the Appellant pleaded guilty voluntarily and the first ground of appeal is discarded.

Considering the second ground of appeal, there is variance between the charge sheet and the facts, I have seen that the facts of the case support the charge sheet, because the facts proved the offence the

Appellant was charged with. I also find the the second ground of appeal is unfounded and it is disregarded.

On the third and fourth grounds of appeal, I agree with the State's Attorney for the Republic that there was no need of conducting preliminary hearing since the Appellant pleaded guilty to the crime he was charged with. There was no need of conducting full trial for the reason that the Appellant unequivocally pleaded guilty to the charge and the third and fourth grounds of appeal has no merits.

On the fifth, sixth and seventh grounds of appeal, which I has preferred to consolidate them, the issue is whether the Appellant was convicted basing on exhibits P1, P2 and P3; which are the cannabis sativa plants, the certificate of seizure and the cautioned statement of the Appellant. The Appellant is complaining that, exhibit P1 which was cannabis sativa plants were not examined by the Government Chemist to prove that it was the prohibited plant. He is also complaining that exhibit P2 was signed at the Police Station instead of been signed at the scene of crime but he has failed to prove that the certificate of seizure was signed at the Police Station and not at the scene of crime.

It must be born in mind that the Appellant was convicted basing on a plea of guilty and when the prosecution tendered exhibits P1, P2 and P3 he has no objection. On exhibit P3, the Appellant is complaining that it was not voluntarily made. It is important to note that, when exhibit P3 was tendered, the accused has no objection. If the appellant has rejected the caution statement on the ground that he was beaten, the trial Court under section 127 of the *Evidence Act* (Cap. 6, R. E 2022), would have conducted an inquiry to determine whether the exhibit were voluntarily made or not.

In my humble view, I think that, if the Appellant would have challenged the validity of the exhibits at the trial Court, the Court would not recorded that the Appellant pleaded guilty to the offence he was charged with. As much as I am concerned, I find that the sixth ground of appeal is unfounded.

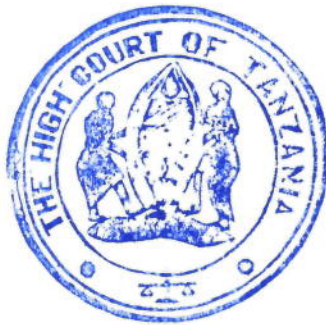
Therefore, in this case, I think that the Appellant, since he pleaded guilty and accepted the exhibits he cannot complain that the procedres were not followed and he was convicted basing on the exhibits tendered by the prosecution side.

The Appellant is also complaining that the provision of sections 50, 51 and 57 (2) (a) of the *Criminal Procedure Act* (supra) were not complied

with. I am of the view that, since the Appellant pleaded guilty and had no objection on the cautioned statement.

Lastly, I agree with the Respondent's State Attorney that, the Appellant's grounds of appeal are unfounded and I hereby proceed to dismiss this appeal in its entirety. The conviction and sentence of the trial Court are upheld.

DATE and DELIVERED at SONGEA this 19th day of January, 2024.



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U. E. MADEHA

JUDGE

19/01/2024

COURT: Judgment is delivered in the presence of the Appellant and Mr. Frank Sarwat, the learned State Attorney for the Respondent. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "Madeha", is written over the text.

U. E. MADEHA

JUDGE

19/01/2024