

**IN THE HIGH COURT OF TANZANIA  
SUB REGISTRY OF MOSHI  
AT MOSHI**

**CRIMINAL APPEAL NO. 57 OF 2023**

*(Originating from Criminal Case No. 6 of 2022, Same District Court)*

**PETER JUMANNE MNTAMBO.....APPELLANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

21<sup>th</sup> to 29<sup>th</sup> May, 2024

**E.B. LUVANDA, J**

The Appellant was convicted for the offence of unlawful cultivation of prohibited plants to wit cannabis sativa weighing 6.50 grams, the offence which fall under the provision of section 11(1)(a) of the Drugs Control and Enforcement Act, Cap 95 R.E. 2019 and was eventually sentenced to a term of ten years imprisonment.

Briefly, on 29/11/2021 A/Insp. Jovin Kamugisha (PW2) along two police officers visited at the farm of quarter acre situated at Mzimbo Hamlet Mkonga Ijinyu Village, where they saw one Asha Ramadhani (who was acquitted by the trial court) alleged wife of the Appellant. PW2 invited Mdanga Ramadhani

(PW1) who is a hamlet chairperson at Ijinyu Hamlet which is neighbouring to Mzimbo hamlet, moved around the suit farm where PW2 found forty plants (seedlings) suspected to be cannabis sativa, uprooted and seized the same vide a seizure certificate exhibit P1. Exhibit P1 was signed by Asha @Aisha Ramdhani Mmbaga along PW1, PW2 and Judica Evarist Elisante (PW3). PW3 who alleged to have been attending farming near the crime scene at a farm bordering the suit farm, confirmed to be a farm belong to the Appellant and Asha Ramadhani alleged have been cultivating as from May 2021. Meanwhile the Appellant was not seen physically at the alleged farm. On the bases of this evidence, the trial court convicted the Appellant for reason that was in actual possession, control of the suit farm and is the one who hired it and acquitted Asha Ramadhani Mmbaga for reason of lack of knowledge on the existence of bhang in the suit farm and for being a mere caretaker.

In the petition of appeal, the Appellant raised ten grounds of appeal. However for purpose of determining this appeal, I will attend the second ground of appeal thus: The learned trial Magistrate erred in law and factual analysis when he failed to note that the chain of custody of exhibit P2 collectively was compromised as it was crucial to prove oral evidence or proper paper trail of the sequence of events in the handling of the said

exhibit from the time it was seized, controlled, transferred, stored, until it was tendered and admitted in court.

It is to be noted that the Appellant had asked this Court to adopt his ground of appeal and consider his as submission in chief.

In reply to this ground of appeal, the learned State Attorney submitted that the chain of custody of the said exhibit of bhanghi exhibit P2 was not broken, for reason that the witnesses who testified showed properly from the time of arrest to the time of tendering before the court, citing page nineteen of the proceedings. He submitted that PW4 testified that he received the exhibit from PW2 who seized at the farm forty plants suspected to be bhanghi from Asha Ramadhani Mmbaga wife of the Appellant. He submitted that PW4 received exhibit P2 vide a handing over certificate exhibit P3 and in turn handed over exhibit P2 which was in the envelop to D/Sgt Deogratius (PW5). He submitted that PW5 submitted exhibit P2 to the chemist one Michael Bernard for analysis.

May be, I should start by the aphorism that the devil is always in the details. Arguably the prosecution summoned almost all witnesses who handled or delt with exhibit P2 along tendering the documentations for handing over.

That is to say the chain of custody was proved by both oral accounts of series of events along paper trail.

It was the evidence of PW2 that after seizure of forty plants (seedlings) of bhangi (which was done through exhibit P1) he handed over to the exhibit keeper Sgt Richard (PW4). The handing over between PW2 and PW4 was done through handing over certificate exhibit P3. PW4 asserted to had sorted out by removing leaves from the forty plants by picking leaves from the stem and packed the leaves in one brown envelope for analysis. PW4 asserted to had handed over the envelope to D/Sgt Deogratius (PW5) for purpose of submitting to the chief government chemist laboratory. The handing over between PW4 and PW5 was done through handing over certificate exhibit P4. It was the evidence of PW4 that on the same date, PW5 resumed in the evening from the chemist and handed over back the envelope along the report for analysis by the chemist. PW5 stated that to the government chemist laboratory Arusha he was received by Michael Bernard (chemist or analyst) who conducted analysis and handed over back sample along a report for analysis exhibit P5.

It is to be noted that PW2 asserted to had seized a total of forty plants (seedlings) of bang as reflected in a seizure certificate exhibit P1 as also.

reflected in a handing over between PW2 and PW4 exhibit P3. PW4 who took and packed sample, asserted that he packed the dry leaves in a brown envelope. However, the testimony of PW5 suggest he received from PW4 sample of dry leaves packed in a brown envelope with a plastic bag. The testimony of PW5 tally with a handing over certificate (exhibit P4) between PW4 and PW5 which reflect that the dry leaves were packed in a plastic bad inside a khaki envelope. However, PW4's testimony is silent regarding packaging material of plastic bag. In a report of the chemist exhibit P5 suggest the chemist received one khaki envelope "A" inside contained sample of dry leaves suspected to be bhanghi. In exhibit P5 there is no mention of a plastic bag as among packaging used to pack the sample of dry leaves drawn by PW4 from the forty plants (seedlings) seized by PW2. Again, exhibit P5 and PW5 suggest after analysis the exhibit of sample of dry leaves were handed over back.

In evidence, PW2 tendered thirty-seven plants of bhanghi, meaning three plants were missing. When was cross examined by the Appellant as to why he tendered less plants, PW2 explained to be due to withered. PW2 did not explain the whereabouts of dry leaves which were subject for analysis as

sample, but which PW5 also exhibit P5 suggest were handed over back to Same.

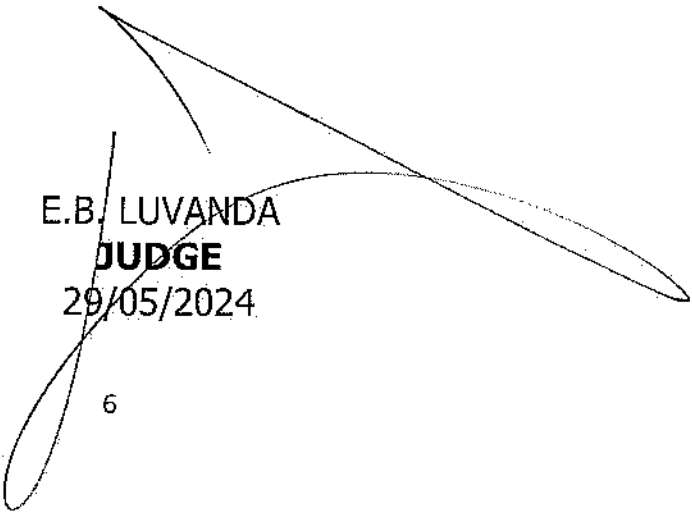
In view of the above, I rule that exhibit P2 was mishandled in a manner which creates doubt of possible tempering with along meddling with the sample submitted to and from the analyst whose whereabouts is unknown.

In the premises, I rule that the chain of custody was not properly maintained as facts suggest it was broken in between.

It is a trite law that chain of custody is the main element for proving the offence relating to narcotic drugs. In other words, failure to prove a chain of custody a charge entails the whole case to flop.

For that reasons I form an opinion that the prosecution case was not proved on the required standard. I therefore quash the conviction and set aside the sentence of ten years. I order the immediate release of the Appellant unless will be held by other lawful cause at the prison.

The appeal is allowed.



E.B. LUVANDA  
**JUDGE**  
29/05/2024

Judgment delivered in the presence of the Appellant and Mr. John Mgave learned State Attorney for the Respondent.



E. B. LUVANDA  
**JUDGE**  
29/05/2024

A large, stylized handwritten signature in black ink, written over the typed name and date.