

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA DISTRICT REGISTRY)

AT BUKOBA

CRIMINAL APPEAL NO. 83 OF 2021

(Originating from Criminal Case No. 28 of 2020 in the District Court of Karagwe at Kayanga)

ARISTIDES SELESTINE @ MTAUNGA-----APPELLANT

VERSUS

REPUBLIC-----RESPONDENT

JUDGEMENT

Date of Last Order: 28/07/2022

Date of Judgment: 12/08/2022

A. E. Mwipopo, J.

The appellant herein namely Aristides Selestine was convicted and sentenced to serve 30 years imprisonment by the District Court of Karagwe at Kayanga in Criminal Case No. 28 of 2021 for the offence of trafficking narcotics drugs contrary to section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act, Cap 95 R.E. 2019. It was stated in the particulars of the offence that on 09.02.2021 at Rwenkende Village within Kyerwa District in Kagera Region the accused person was trafficking in narcotics drugs to wit 22.5 kilograms of cannabis sativa commonly known as bhang.

When the charge sheet was read over to the accused person on 14.07.2021 he admitted that he was found with 22.5 kilograms of bhang. Appellant admitted the facts of the case and the trial Resident Magistrate convicted the appellant for the offence of trafficking in narcotics drugs which he was charged with. Thereafter, the prosecutor informed the Court about previous criminal record of the appellant, the appellant mitigated and the trial Court sentenced the appellant to serve 30 years imprisonment. The appellant was not satisfied with the decision of the trial District Court and appealed in this Court.

The appeal was instituted by petition of appeal which contains the following grounds of appeal provided hereunder:-

- 1. That, the trial District Resident Magistrate grossly erred in law for failure to note that the facts of the case read to the appellant never supported the charge / disclosed the offence pleaded to.*
- 2. That, even taking into consideration of the admitted facts, his plea was imperfect, ambiguous or unfinished and for that reason the lower Court erred in law by treating it as a plea of guilty.*
- 3. That, the appellant pleaded guilty as result of mistake or misapprehension.*
- 4. That, the trial District Resident Magistrate could not in law have convicted the appellant for the offence charged upon the admitted facts.*
- 5. That, the trial District Resident Magistrate grossly erred in law when admitted all prosecution exhibits against the manner of tendering them in Court which include inter alia being read out after admission.*

On the hearing date, the appellant was present in person and the respondent was represented by Mr. Amani Kirua, State Attorney.

When the appellant was afforded chance to submit in support of his grounds of appeal, he prayed for the Court to consider all of his grounds of appeal found in his petition of appeal.

In response, the counsel for the respondent opposed the appeal and said that the appeal has no merits. He submitted on the first ground of appeal that the proceedings of trial court shows at page 10 that on 14.07.2021 the prosecution substituted the charge sheet and it was read over to the appellant who admitted to commit the offence. His admission is unequivocal as he pleaded that he was found with 22.5 Kg of bhang. The prosecution narrated the facts of the case which the accused admitted to be true. The accused person signed the facts. The said facts disclosed the offence appellant was charged with.

On the second ground of appeal, the counsel said that each facts was explained to the accused person who admitted that they are correct. The said facts disclosed elements of the offence appellant was charged with. The counsel submitted that the third ground of appeal has no merits. The appellant understood the offence he was facing. The facts were narrated to the appellant and he signed to prove that he admit them.

Turning to the fourth ground of appeal, it was submission of the counsel for the respondent that the facts disclosed the elements of the offence appellant was charged with. The District Court properly convicted the appellant based on the facts as a result the grounds has no merits.

On the last ground of appeal, the counsel said that there was no tendering of the exhibits and the said exhibits was not part of the proceedings. As result, there was no need to read it as it was not tendered. The list of Exhibit might be expunged from record, but the facts of the prosecution is still sufficient to prove the offence.

In his rejoinder, the appellant said that prosecution promised him if he admit the offence he will pay Tshs. 500,000/= only. For that reason, he admitted to commit offence. He prayed for the court to reduce the sentenced imposed to him.

From the grounds of appeal which the appellant prayed for the Court to consider, it is clear that he is challenging his plea before the trial District Court that it was equivocal.

Under section 360(1) of the Criminal Procedure Act, Cap. 20 R.E. 2019, (the CPA), a person convicted of an offence for his own plea of guilty can only appeal against the extent or legality of the sentence imposed. However, such a person may appeal if the circumstances renders a plea to be equivocal. This was stated

by the Court of appeal in the case of **Karlos Punda vs. Republic**, Criminal Appeal No. 153 of 2005, (unreported). Thus, the appellant properly brought this appeal as he is saying that his plea was equivocal.

The Court of Appeal did set four factors which renders the plea equivocal in the said case of **Karlos Punda vs. Republic case**, (supra). The factors to taken into account includes that the plea was imperfect, ambiguous or unfinished; that the appellant pleaded guilty as a result of mistake or misapprehension; that the charge laid at the appellant's door disclosed no offence known to law; and that upon the admitted facts the appellant could not in law have been convicted of the offence charged.

In another case of **Michael Adrian Chaki vs. Republic**, Criminal Appeal No. 399 of 2019, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported), the Court of Appeal highlighted the conditions to be met for the plea to be considered as unequivocal. The conditions includes that the appellant must be arraigned on a proper charge and must fully understands what he is actually faced with. The charge has to be stated and fully explained to the appellant before his plea is recorded or before he admit each and every particular ingredient of the offence. The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged and the appellant must be asked to plead to each and every ingredient of the offence charged and the same must be properly

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

In the case at hand, there is no problem with the offence which the appellant was charged with as the appellant was arraigned on a proper charge of trafficking in narcotic drugs known to our laws. The charge sheet was read over to the appellant who admitted to commit the offence. His plea suggest that he fully understood what he was actually charged with. In his plea, the appellant said that he was found with 22.5 kilograms of bhang.

Thereafter, the facts of the case was recorded. The typed proceedings of the trial Court is silent if the prosecutor narrated the facts of the case. What is found in page 10 of the typed proceedings of the trial District Court is facts of the case in paragraphs 1 to 9 where the appellant was recorded admitting each of the said facts in the numbered paragraphs. The said facts were recorded as follows:-

"FACTS OF THE CASE

- 1. That the accused admit the fact that his personal particulars are as per charge sheet.*
- 2. That the accused person admit the fact he is charged for one count of trafficking narcotic drugs.*
- 3. That the accused person admit the fact that on 09.02.2021 at about 23:00 hours at Rwenkende Village within Kyerwa District in Kagera*

Region he was arrested with unlawful narcotic drugs commonly known as bhang 22.5 kilograms.

- 4. That the accused person admit the facts that on the same date which was mentioned above seized the exhibit and both parties signed seizure form.*
- 5. That the accused person admit the fact that on 10.02.2021 around 12:10 hours noon he arrived at Kaisho Police Station and accused was interviewed and confessed to be found with cannabis sativa commonly known as bhang.*
- 6. That the accused person admits that on 03.03.2021 an exhibit bhang was taken to Agency of Measuring at Bukoba town whereby it found 22.5 kilograms.*
- 7. That the accused admit the fact that on 15.03.2021 sample was prepared and taken to Government Chemist who examined and the answer came out that it is narcotic drugs commonly known as bhang.*
- 8. That the accused person admit the fact that on 15.02.2021 he was taken before this Court to answer the charge and pleaded not guilty.*
- 9. That the accused admit the fact that on 14.07.2021 he pleaded guilty to the charge.*

That is all.

Sgn: R.P. Kaanwa – RM

14.07.2021

Accused person's signature: sgd

Public Prosecutor: sgd

Exhibits

1. *Cautioned Statement of the accused*
2. *Certificate of seizure*
3. *Report of Agency of Measurements (Wakala wa Vipimo)*
4. *Report from the Government Chemist*
5. *Chain of custody*

That is all.

Sgd: R.P. Kaanwa – RM

14.07.2021”

It is obvious that what was recorded by the trial District Court in the paragraphs as the facts of the case is what was admitted by the appellant. There is no facts narrated by the prosecutor which was recorded in the proceedings of the trial District Court.

It is trite law that the facts narrated by the prosecution must disclose and establish the offence which the appellant was charged with as it was stated by the Court of Appeal in the case of **Michael Adrian Chaki vs. Republic**, (supra). In the present case, it is not clear if the prosecutions narrated facts to the accused person and if the said facts recorded by the Court as admitted by the appellant are the facts which were narrated by the prosecutions. This omission has prejudiced the appellant as the content of the facts narrated by the prosecution is not known and it is not known if the appellant admitted to the facts narrated by the prosecutions. It is not known if the facts adduced after recording a plea of

guilty discloses and establish all the elements of the offence charged. For that reason, it could not be said the prosecution narrated the facts of the case to the appellant and the said facts, if it was narrated, discloses and establishes all the element of the offence charged.

Further, the typed proceedings is silent if the Exhibits were tendered. In page 12 of the typed proceedings 5 exhibits were mentioned. The said mentioned exhibits are cautioned statement of the accused, certificate of seizure, report of Agency of Measurements (Wakala wa Vipimo – Weights and Measures Agency), report from Government Chemist and chain of custody form. In the record of the trial District Court the said exhibits were marked as exhibit P.II to P.V, but the proceedings does not show at all if the exhibits were tendered by prosecutions.

The trial District Court was supposed to satisfy itself without any doubt that the facts adduced discloses or establish all the elements of the offence charged before a conviction on a plea of guilty is entered. However, the typed proceedings shows in page 12 that the trial District Court in its findings proceeded to convict the appellant after he admitted to commit the offence and the facts narrated which are not recorded in the proceedings. The trial District Court did not satisfy itself without doubts if the said narrated facts discloses all the elements of the offence charged before entering a conviction on the plea of guilty.

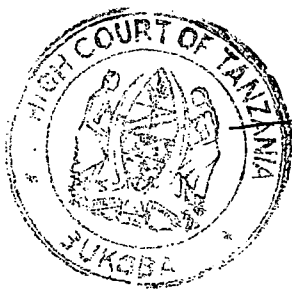
These omissions pointed out above suggest that the appellant plea was equivocal and the trial District Court erred to record that the appellant pleaded guilty to the offence.


Therefore, I quash the whole proceedings before the Karagwe District Court sitting at Kayanga in Criminal Case No. 28 of 2021 and its sentence is set aside. The file is reverted back to the trial District Court and I order for the trial to start afresh before another Magistrate. The appellant has to remain in custody and shall appear before the Karagwe District Court on the date to be scheduled. It so ordered accordingly.




A.E. Mwipopo
Judge
12/08/2022

Court: The Judgment was delivered today 12/08/2022 in the presence of the appellant and the counsel for the respondent.




A.E. Mwipopo
Judge
12/08/2022