

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**(APPELLATE JURISDICTION)**

**(DC) CRIMINAL APPEAL NO. 155 OF 2020**

(Original Criminal Case No. 37 of 2018 of the Resident Magistrates'  
Court of Dodoma at Dodoma)

**1. PETER KIHANDA**  
**2. RAMADHAN BAKARI** } ..... **APPELLANTS**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

*28/12/2020 & 30/12/2020*

**JUDGMENT**

**MASAJU, J**

The Appellants, Peter Kihanda and Ramadhan Bakari (the 1<sup>st</sup> and 2<sup>nd</sup> Appellants respectively) were jointly and together charged with, and convicted of the offence of Trafficking Narcotic Drugs contrary to section 15 (2) of the Drug Control and Enforcement (Amendment) Act, 2017 read together with the First Schedule to and section 57 (1) of the Economic and Organised Crime Control Act, [Cap 200] as amended by section 16 (b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 (sic) in

the Resident Magistrates' Court of Dodoma at Dodoma and sentenced to serve life imprisonment, hence this Appeal to the Court against their conviction and the sentence thereof as it can be seen in their Petition of Appeal which was filed in the Court on the 16<sup>th</sup> day of September, 2020 and the Additional Petition of Appeal (sic) that was filed in the Court on the 11<sup>th</sup> day of November, 2020.

In their Petition of Appeal (consolidated) the Appellants state that the case against them before the trial Court was not proved beyond reasonable doubt. That their conviction was based on procedural irregularities and that the sentence against them was excessive. The Appellants further state that the trial Court lacked jurisdiction to try the economic criminal case against them for want certificate of transfer from Bahi District Court contrary to section 29 (1) of the Economic and Organised Crime Control Act, [Cap 200]. That, the trial Court erred in law and fact when it received the evidence adduced by Emmanuel Gwae (PW2) who took no oath prior to his testifying before the trial Court contrary to section 198 (1) of the Criminal Procedure Act, [Cap 20]. That, the Chief Government Chemist Report (Exhibit P3) was not read out to them upon its admission in evidence, it therefore lacked value. That, there was no proof that

Emmanuel Gwae (PW2) actually worked with the Chief Government Chemist, for there was no introduction letter or Identity Card to that effect that was made available to the trial Court. That, there was violation of police General Order (PGO) No. 29 as regards handling of exhibits and that being the case, the chain of custody of the alleged six bags of Narcotic Drug (bhang) was not established accordingly before the trial Court. That, they were convicted on the wrong procedure of admitting the intended exhibits against them first instead of being given the opportunity to cross examine the witnesses prior to admitting the exhibits. And, finally that there was no proof that the consignment they were found in possession of was actually bhang otherwise the same couldn't have been sent to the Chief Government Chemist for Chemical analysis if the same were bhang.

When the Appeal was heard before the Court on the 3<sup>rd</sup> day of December, 2020, the laymen Appellant's appeared in persons and adopted the grounds on their Petitions of Appeal to form submissions in support of their Appeal accordingly. They prayed the Court to consider the said grounds and allow the appeal.

The Respondent Republic contests the appeal and at the hearing of the Appeal, the learned State Attorney, Mr. Harry Mbogoro, advocated for

the Respondent Republic accordingly. The Respondent Republic argued that the trial Court was seized with the jurisdiction to try the case pursuant to section 29 (1) of the Economic and Organised Crime Control Act, [Cap 200] and that the economic Crime case against the Appellant was instituted in the trial Court right away. That, the Appellants had never been indicted before the District Court of Bahi.

The Respondent Republic conceded that Emmanuel Gwae (PW2) did not take oath prior to his testifying before the trial Court contrary to section 198 (1) of the Criminal Procedure Act, [Cap 20]. That, it was a trial Court's own error, the same should not affect the prosecution case and that the error was curable under section 388 (1) of the Criminal Procedure Act, [Cap 20]. That, the Court can still treat the evidence adduced by PW2 as unsworn evidence, which needs to be corroborated in order to be successfully acted upon by a Court. That, PW2's evidence was corroborated by E 2702 D/Cpl. Hafidhi (PW9) who eyewitnessed PW2 receiving and analyzing the drugs specimen sent to the Chief Government Chemist. The Respondent Republic invited the Court to take into account the evidence adduced by PW2, for it was credible. That, PW2 introduced himself that he was working with the Chief Government Chemist. That,

even the chief Government Chemist's Report which PW2 tendered before the trial Court for admission in Evidence (Exhibit P3) clearly shows that the said witness belonged to the Chief Government Chemist. That, the said Report (Exhibit P3) upon its admission in evidence was read out before the trial Court.

The Respondent further argued that there was chain of custody in regard to the narcotic drug found in possession of the Appellants, for there was compliance with the Police General order No. 29 accordingly. That, the chain of custody was so established and proved before the trial Court by F. 4488 Cpl. Salum (PW8), E 2702 D/Cpl. Hafidhi (PW9), Inspector Malima (PW10), E 9788 PC Fabian, Zadath Gharibu (PW12) and the Exhibit Register (Exhibit P9).

The Respondent submitted that during the trial of the case against them before the trial Court, the Appellants were severally represented by the learned counsels. That, the Appellants through the service of their learned counsels were afforded with the opportunity to be heard prior to the intended prosecution exhibited being admitted in evidence and for the cross examination thereof. That, since the Appellants were found in possession of the narcotic drug (bhang) and the same was so confirmed by

the Chief Government Chemist, there was therefore proof that the Appellants were found in possession of the narcotic drug (bhang). That, the prosecution case against the Appellants before the trial Court was therefore proved beyond reasonable doubt. That, the sentence against the Appellants was the minimum in terms of the amount of the narcotic drug the Appellants were trafficking. The life imprisonment was therefore a lawful sentence. The Respondent Republic prayed the Court to dismiss the Appeal for want of merit.

The Appellants, in rejoinder, maintained their submissions in chief as per their grounds of appeal which had been adopted to form their submissions in support of the Appeal in the Court. That is all by the parties.

The Court is of the considered position that, the Appellants were caught red-handed trafficking the narcotic drugs (6 bags of bang) on the 19<sup>th</sup> day of May, 2018 at Bahi at Relini Police Check Point. The prosecution witnesses Seif Hamad Hemed (PW1), G.6721 D/C Peter (PW3), D. 6392 Cpl. Abdallah (PW4), H. 3332 DC Boniphace (PW5), Asst. Inspector Luka Kato (PW6) and Victor Leonard Chalubi (PW7) so testified. The Appellants themselves so confessed in their Cautioned Statements that were admitted

in evidence as prosecution Exhibits "P2" and "P3" respectively. Even during his defence the 2<sup>nd</sup> Appellant, Ramadhan Bakari (DW2), so testified. The 1<sup>st</sup> Appellant denied being accomplice to the offence during his defence before the trial Court. Yet, the 2<sup>nd</sup> Appellant's self-incriminating evidence and as against the 1<sup>st</sup> Appellant was corroborated by PW1, PW3, PW4, and PW5 who saw the 1<sup>st</sup> Appellant in the Lorry the 2<sup>nd</sup> Appellant was driving, which Lorry had the six bags of bhang (the narcotic drug). There was also the 1<sup>st</sup> Appellant's own confession (Exhibit P3) that being the case, the 2<sup>nd</sup> Appellants' confession before the police force (Exhibit P4) and before the trial Court was so rightly acted upon by the trial Court in terms of section 33 (1) (2) of the Evidence Act, [Cap 6] to find the Appellants guilty of the offence and convict them accordingly. There was no reason for the 2<sup>nd</sup> Appellant to implicate the 1<sup>st</sup> Appellant with the consignment in the Lorry he was driving if the said bhang consignment belonged not to the 1<sup>st</sup> Appellant. The Court therefore is of the firm position that the Appellants were found trafficking the narcotic drugs (six bags of bhang) on the 19<sup>th</sup> day of May, 2018.

Indeed, Emmanuel Gwae (PW2) gave unsworn evidence with no apparent reason recorded contrary to section 198 (1) of the Criminal

Procedure Act, [Cap 20]. The said witness, who works with the Chief Government Chemist and apparently as per PW9, is the one who worked on the samples taken from the six bags of bhang the Appellants were found in possession of, was a competent and compellable witness pursuant to section 127 (1) of the Evidence Act. The non-taking oath of the said competent witness might have been, other things being equal, inadvertent error by the trial Court. Since the Prosecution exhibits P2 and P3 evidence which was the subject of his testimony was admitted in evidence without objection from the Appellants who were represented by their learned counsels, though substance of Exhibit P3 was not read out before the trial Court, the Court refrains from expunging the unsworn evidence by PW2 on the reasoning that PW2's evidence was neither controverted nor objected by the Appellants and the fact that the Appellant themselves confessed that they were found in possession of six bags of bhang. That is to say, the giving of unsworn evidence by the PW2 and the non-reading out of Exhibit P3 before the trial Court did not prejudice the Appellants' defence. The errors were therefore curable under section 388 (1) of the Criminal Procedure Act, [Cap 20], for it did not occasion failure of justice. The Court agrees with the Respondent Republic that, the chain of custody of


the six bags of bhang was proved and established accordingly as per the evidence adduced by the prosecution witnesses and the exhibit thereof bearing in mind also that the Appellants themselves confessed to have been found in possession of the narcotic drugs (six bags bhang) as per their Cautioned Statements Exhibits P5 and P4 respectively and during the defence by the 2<sup>nd</sup> Appellant (PW2) before the trial Court.

The trial Court was seized with the jurisdiction to try the economic crime case pursuant to section 29 (1) of the Economic and Organised Crime Control Act, [Cap 200]. There was also the consent for prosecution and the certificate of jurisdiction to the trial Court so signed by the Director of Public prosecutions pursuant to sections 26 (1) and 12 (3) of the Economic and Organised Crime Control Act, [Cap 200].

The prosecution case against the Appellants before the trial Court was therefore proved beyond reasonable doubt. The Appellants were therefore so rightly convicted of Trafficking Narcotic Drugs as charged. The sentence of life imprisonment was in line with section 15 (2) (3) (i) of the Drug Control and Enforcement Act, [Cap 95], for the Appellants were found trafficking the narcotic drug weighing 161.06 Kg which is more than 200 grams thereby warranting life imprisonment.

That said, the appeal is hereby dismissed in its entirety for want of merit.



  
GEORGE M. MASAJU

**JUDGE**

30/12/2020