

TANZANIA / JUDGMENT

republic vs kenyatta munisi

2022 tzhc 10905 29 july 2022

COURT
TZHCDECIDED
29 July 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA [IN THE DISTRICT REGISTRY OF ARUSHA] AT ARUSHA CRIMINAL REVISION NO. 05 OF 2021 (Originating from Criminal case No. Ill of 2021 of the Court of Resident Magistrate of Arusha)

REPUBLIC..... APPLICANT VERSUS KENYATTA
MUNISI..... RESPONDENT

RULING

04th & 29 July, 2022 TIGANGA, J. On 13th day of December, 2021, in his normal duty of supervision, Hon. Mzuna, J, the Judge in charge High Court of Tanzania Arusha zone, while inspecting the registry of the Court of Resident Magistrate of Arusha, found some case files which in his view contained orders which were either illegal or irregular. In his view, these files needed to be correct by this court. One of those cases was Criminal Case No. Ill of 2021 in which the current respondent was accused of trafficking in narcotic drugs Contrary to section 15A (1) of the Drugs Control and Enforcement Act, [Cap 95 R.E 2019], herein after the Act. In that case, the accused (now the Respondent in this Revision) Stood charged with an offence of i Trafficking in Narcotic Drugs or Psychotropic substances contrary to section 15A (1) of the Act as amended by section 9 of the Drugs Control and Enforcement (Amendment) Act No. 15 of 2017. He was charged to have been found trafficking in Narcotic Drugs namely ("Catha Edulis")Khat, popularly known as "Mirungi" weighting 19.4 Kilograms. He was found guilty and convicted on his own plea of guilty. Consequent to that conviction, he was sentenced to pay fine of Tsh. 250,000/= (Tanzania shilling two hundred and fifty thousand only) or to a custodial sentence of three years. After Hon. Mzuna, J. had found the sentence imposed, he directed the case file to be called and revision proceedings be commenced intending to examine the legality of the said sentence. After the commencement of the revision proceedings, he ordered parties to be summoned to appear before the court and address it on the legality of the sentence. Efforts to serve the accused proved futile, but the Republic were served and appeared through the Representation of Ms. Akisa Mhando, Learned Senior State Attorney. Following non service of the Accused, the court ordered service to him to be made by way of publication which was done through Mwananchi News paper of 28th June, 2022 informing the accused to appear for hearing on 04th day of July, 2022. However, on the date the accused was summoned, he did not appear therefore the matter was

heard *ex parte*. When called upon to address the court on the legality of the sentence, Ms. Akisa Mhando, Senior State Attorney for Republic submitted that, in her view, the sentence imposed by the subordinate court in this case is illegal. On that she said, section 15A (1) of the Drugs Control and Enforcement Act [Cap. 95 R.E 2019] provides for the sentence of 30 years imprisonment for an accused person who has been found guilty and convicted under section 15A (1) of the Drugs Control and Enforcement Act (Supra) shall be sentenced to thirty years jail imprisonment. She submitted that, the phraseology of the provision is in mandatory terms as it uses the word "shall". In her view, the sentence imposed to the respondent by the trial court is illegal as it goes against section 15A (1) of the Act. She prayed under section 373 of the Criminal Procedure Act [Cap. 20 R.E 2019] to revise and alter the sentence and step into shoes of the trial court by sentencing the accused person the proper sentence as provided under Section 15A (1) of the Act. To appreciate the gist of the matter at hand, it is important to quote in extenso the provision under which the accused was charged, found guilty and convicted on his own plea, that is section 15A of the Act which provides that: "15A (1) Any person who traffics in Narcotic Drugs, and Psychotropic substance or illegally deals or diverts Precursor chemicals or substances with drug related effects or substances used in the process of manufacturing drugs of the quantity specified under this section contains an offence and upon conviction "shall be liable to imprisonment for a term of thirty years," The law is clear; it requires a person found guilty for trafficking in narcotic drugs to be imprisoned for a term of thirty years. In this case, the respondent was charged for trafficking in narcotic drugs under section 15A (1) of the Act. He was found guilty and convicted. Instead of sentencing him to a statutory sentence of thirty years as prescribed under section 15A (1), he was sentenced to pay fine of Tshs. 250,000/= or in default to serve three years jail imprisonment. In law, the sentence imposed to the accused person who is found guilty and convicted must be legal. The legal sentence is the one prescribed by the law which creates the offence and the imposed sentence should be within the range of the prescribed one. On the other hand, the 4 sentence becomes illegal when it is either above or below the prescribed one. In this case, the sentence imposed is bellow the prescribed sentence therefore an illegal sentence. Now having declared it to be illegal, what should be the right recourse? On way forward, Ms. Akisa Mhando has asked me to invoke the revisionary powers under section 373 of the Criminal Procedure Act [Cap. 20 R.E 2019] to revise and alter the sentence and step into the shoes of the trial court to impose the proper sentence as prescribed under section 15A of the Act. For easy reference, I find it necessary to reproduce the provision of section 373(1) as follows: "In the case of any proceedings in a subordinate court, the record of which has been called for or which has been reported for orders or which otherwise comes to its knowledge, the High Court may:-

- (a) In the case of conviction, exercise any of the powers conferred on it as a court of appeal by section 366, 368 and 369 and may enhance the sentence? Reading between lines the provision of the law quoted hereinabove, under the powers bestowed upon me, do hereby find that the sentence imposed to the respondent is illegal, as it is manifestly inadequate. In the 5 circumstances, I do hereby revise the sentence, quash the sentence of a fine of Tsh. 250,000/= or three years jail imprisonment in default, and substitute it with an enhanced based on statutory sentence of thirty years jail imprisonment. The enhanced sentence shall

start on the arrest and arraignment of the accused person who is the respondent in this revision. I order that the accused be arrested and serve his new but statutory sentence of thirty years imprisonment. I accordingly order. DATED at ARUSHA, this 29th day of 2022. J. C. TIGANGA JUDGE 6

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