

Hfc - DSM

IN THE HIGH COURT OF TANZANIA

AT MTWARA

CRIMINAL APPEAL NO. 137 OF 2005

ORIGINAL NEWALA DISTRICT COURT

CRIMINAL CASE NO. 197 OF 2002

HAMISI CHARLES HUNGO.....APPELLANT

versus:

THE REPUBLIC.....RESPONDENT

JUDGEMENT

LUKELELWA, J.

The appellant Hamisi Charles Hungo was on 21/2/2003 convicted by Newala District Court in Mtwara on a charge of Unlawful possession of Narcotic drugs contrary to section 19(1) (b) of the Drugs Prevention of Illicit Traffic in Drugs Act No. 9 of 1995 and sentenced to pay a fine of shs. 200.000/- or five years imprisonment in default.

Two witnesses gave evidence for the prosecution. These were PW1 F.923 PC Prudence and a militiaman PW2 Juma Iddi.

PW1 works with Mchichira Police Post while PW2 is a Mchichira village militiaman.

PW1 was instructed by the Officer Commanding Station, OCS Mahuta Police Station to arrest the appellant on an offence of Threatening Violence.

That was on 9/9/2002 PW1 left with one policeman and PW2. They managed to arrest the appellant at the other side of Ruvuma river at 9.00 a.m.

The appellant was sent to Mchichira Police Post, where PW1 searched him and was found in possession of five rolls of bhang.

The appellant had denied having been found in possession of the bhang.

The respondent Republic declined to support both conviction and sentence. Mr. Luena learned State Attorney submitted that the appellant was denied by the Court an opportunity to call

his defence witness one Hamisi Bakari Mohamedi of Maundo village (Ng'ombo) whom he had indicated at preliminary hearing.

The learned State Attorney also submitted that the evidence of PW1 and PW2 was suspect and doubtful. There was no reason why the appellant was not searched at 9 a.m. when he was arrested, only to be searched later in the evening.

I entirely agree with the submissions made by the learned State Attorney.

I therefore quash the conviction and set aside the sentence imposed on the appellant.

It is further ordered that the appellant shall be released forthwith from prison unless held therein on other lawful charges.

Appeal allowed.

S. B. LUKETELEWA

JUDGE

16/12/2005.

