**Muhagama v Government of Zanzibar**

**Division:** Court of Appeal of Tanzania at Zanzibar

**Date of judgment:** 31 October 2003

**Case Number:** 17/02

**Before:** Mroso, Munuo and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Criminal procedure – Right of representation by advocate – Whether trial court has duty to inform*

*accused of his right to be represented by an advocate – Section 162 – Criminal Procedure Decree*

*(Chapter 14).*

*[2] Evidence – Exhibits – Handling of exhibits by police – Whether possibilities of tampering with*

*exhibits excluded.*

**Editor’s Summary**

The Appellant was arrested by seven police constables who were on patrol. On being arrested, the Appellant’s pockets were searched and a blue plastic bag was found. In the bag were 46 packets wrapped in khaki paper. The packets contained dried leaves which the police suspected to be bhang. The Appellant was then taken to Ngambo police station. After a period of 26 days after the packets were found on the Appellant, the same were sent to the Government Chemist who six months later issued a certificate of analysis to the effect that the packets contained bhang.The Appellant was charged and convicted by the Regional Magistrate at Vuga, Zanzibar of unlawful possession of a narcotic drug. He was sentenced to 15 years in an education centre. His appeal to the High Court of Zanzibar was dismissed and he filed a further appeal to the Court of Appeal on grounds *inter alia*, that the proceedings and conviction by the trial court were a nullity because the trial court did not inform the Appellant of his right under section 162 of the Criminal Procedure Decree to engage an advocate; and that there was a possibility that the contents of the 46 packets which were found by the Government Chemist to be bhang would have been tampered with between the time they were said to have been found on the Appellant and when they were tendered in court.

**Held** – Section 162 of the Criminal Procedure Decree does not impose an obligation on the court to inform an accused person that he has such a right but merely declares the right of a person who is charged in any criminal court to be defended by an advocate where he chooses to have such service (*Mjengi v Republic* [1992] TLR 157 considered). The handling of the samples from the time they were taken to the police station to the time of chemical analysis created a real doubt as to whether the prosecution had proved its case against the Appellant to the required standard. Appeal allowed, conviction quashed.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Mjengi v Republic* [1992] TLR 157 – **C**