

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: KILEO, J.A., JUMA, J.A., And MWARIJA, J.A.)

CRIMINAL APPEAL NO. 348 OF 2015

ZAINABU D/O NASSORO @ ZENAAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Judgment of the High Court of
Tanzania at Moshi)**

(Mugasha, J.)

Dated the 9th day of July, 2012

In

Criminal Sess. No. 28 of 2008

JUDGMENT OF THE COURT

12th & 15th October, 2015

JUMA, J.A.:

The main question which arises for our determination in this appeal centres on the chain of custody of substances suspected to be narcotic drugs. Specifically, whether the 960 pellets containing whitish powder which the police found underneath a suspect's clothing on 31/12/2007 in Moshi; is the same substance which the Office of the Chief Government Chemist (**CGC**) in Dar es Salaam received for chemical analysis on 28/1/2008, and determined the same to be ***Heroin hydrochloride*** or ***Diacetyl Morphine***.

The appellant, Zainabu d/o Nassoro @ ZENA, was charged with trafficking in narcotic drugs contrary to section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs, Cap. 95 R.E. 2002 (hereinafter referred to as "**Anti-Drugs Act**"). The particulars of the charge alleged that she was found unlawfully trafficking 62.12 grams of *Heroin Hydrochloride* valued at Tshs. 1,242,400/=.

After hearing the testimony from a total of six prosecution witnesses and the appellant testifying in her own defence, the trial High Court (Mugasha, J.) at Moshi convicted the appellant as charged and sentenced her to serve twenty (20) years in prison and to pay a fine of Tshs. 10,000,000/=.

According to the case built by the prosecution, on 28/12/2007 the Regional Crimes Office in Moshi received a tip that there was a lady who routinely sold drugs along the Dar es Salaam Street in the municipality of Moshi. Inspector Daudi Mathew (PW1) from the Regional Crimes Office arranged surveillance. The police set its dragnet on 31/12/2007 along the Dar es Salaam Street. At around 7.30 a.m., a group of police officers, who included WP 6415 PC Mariam (PW4) and WP 6556 Wanguzu (PW3); watched as Zainabu d/o Nassoro @ ZENA left her house and walked

towards the Uswahilini area of Moshi. She was at the time pregnant, and dressed in a hijab.

It was Detective Corporal Wanguzu (PW3) who stepped forward to accost the appellant. Inspector Daudi Mathew (PW1) came over and introduced himself and proceeded to arrest the appellant on suspicion that she was carrying drugs, and escorted her to the police station. In a special room at the police station, SGT Mwajuma (PW2) supervised the body search which was conducted by Detective Corporals Mariam (PW4) and Wanguzu (PW3). After ZENA had removed her black hijab, underskirt and red underwear, PW3 was surprised that although the appellant was evidently pregnant, she wore something like a sanitary pad which is ordinarily worn by women in their menses. PW3 pulled the pad off and discovered black socks with plastic cover. After the appellant had dressed up, PW2 the supervisor of the search invited PW1 inside the room to witness the outcome of the body search. PW2 testified about their finding as follows:

"...We showed the pack in black socks to Inspector Daudi in presence of the accused. The socks was opened and inside was a nylon bag with 960 pellets each tied in brown khaki

paper. I remember the pellets because they are tied in the same brown paper. The pellets were taken by Inspector Daudi for safe custody. That was the end of my work."

The appellant denied that she was arrested whilst in possession of narcotic drugs. She explained that she was arrested whilst on her way to Mbuyuni market where she operates a stall (a small shop) selling spices. The appellant gave her own version of how she was searched when they arrived at the police station. She insisted that the police found nothing on her even after she had undressed. She complained about the fabrication of the evidence against her when PW3 opened a drawer in the office, and fished out a parcel which she placed on the table. This parcel was opened when PW1 joined them in the room. The appellant wondered why no civilian was involved when the police decided to search her body in the police station.

On 28/1/2008, which was twenty-eight days after the appellant had been arrested, searched and suspected drugs found on her; the suspected drugs reached the Principal Chemist Grade 1, Berta F. Mamuya (PW5).

PW5 testified that the package was opened at the Drugs Section of the Offices of the **CGC**. The specimen of suspected drugs was accompanied with a letter from the Moshi Police. The pellets were counted, weighed, colour tested before they were subjected to the determinative (confirmatory) test. The count of the pack found 960 pellets, weighing 62.12 grams. The initial non-confirmatory colour test indicated presence of heroin hydrochloride. The second confirmatory test confirmed that the pack contained **Heroin Hydrochloride** or **Diacetyl Morphine hydrochloride**. The Principal Chemist's report on the confirmatory finding was confirmed by her boss, Dr. E.N.M. Mashimba (Ph.D.) the Chief Government Chemist. It was tendered as exhibit P2.

After the confirmatory tests, PW5 sealed the sample and handed over to Detective Corporal Jeromi who allegedly returned the analysed pellets back to the storage in RCO's office in Moshi. The analysed samples were later tendered in court by Inspector Daudi as exhibit P1. The Commissioner of the Drug Control Commission, Christopher Joseph Shekiondo (PW6), later conducted the valuation of the drugs in terms of its weight and valued it at Tshs. 1,242,400/=. PW6 issued a certificate of value which he tendered in the trial court and was admitted as exhibit P3.

In convicting the appellant as charged, the trial judge was satisfied that the prosecution witnesses were reliable, and in particular the evidence of PW1, PW2, PW3 and PW4 proved beyond reasonable doubt that after her arrest by the police, the appellant was searched and was found with heroin hidden underneath her underwear. The trial judge also found that the evidence of PW1 proved that the 960 pellets of suspected drugs were safely kept in a strong room in the office of the Regional Crimes Officer (RCO) before their onward transmission to the Government Chemist, PW5 who confirmed that it was heroin.

Aggrieved by her conviction and sentence, the appellant brought this appeal based on the following five grounds of complaints which the Brotherhood Attorneys, filed on her behalf on 24/12/2014:

- 1. That learned Madam Judge erred in fact in making and unveiling that there is a fragmented between the date where they mistrusted the Appellant with drugs and the date where the said drugs tied up to the government chemist.*
- 2. That learned Madam Judge erred in fact and law in holding that the prosecution did prove its case beyond reasonable*

doubt without considering that the evidence tendered is weak and falls short of supporting evidence.

- 3. That learned Madam Judge erred in fact and law by wrongly convicting the Appellant without considering the principles which have to be taken into account in respect to chain of custody and preservation of the exhibits.*
- 4. That learned Madam Judge erred in fact and law by committing and sentencing the appellant without considering the failure of the prosecution to provide certificate of seizure to prove that the drugs were seized from the appellant.*
- 5. That learned Madam Judge erred in fact and law by finding the Appellant guilty by relying on inconsistency and contradictory statements by prosecution witnesses.*

When the appeal was called on for hearing on 12th October, 2015, Mr. Wilson Ogunde, learned advocate appeared for the appellant. Mr. Paul Kadushi learned State Attorney appeared for the respondent/Republic. Earlier on 9th October, 2015 the Brotherhood Attorneys had filed written submissions on the appellant's behalf. Mr. Ogunde abandoned the first ground of appeal and adopted the written submissions to expound on the

remaining grounds of appeal number 2, 3, 4 and 5. It is opportune, therefore, to highlight the written submissions on grounds of complaints.

The second ground of appeal contends that the case against the appellant was not proved beyond reasonable doubt. It was submitted that the trial judge erred when she based her conviction on credibility of the prosecution witnesses without considering whether there was sufficient evidence to prove beyond reasonable doubt that the appellant was found trafficking the substance described by the Government Chemist as Heroine Hydrochloride or Diacetyl Morphine. Mr. Ogunde wondered how the four prosecution witnesses, PW1, PW2, PW3 and PW4; could have testified about the finding of a parcel which was in black socks, but failed to tender that socks to establish whether it could accommodate the 960 pellets as alleged.

Citing the decision of the Court in **Abuhi Omari Abdallah & 3 Others vs. R.**, Criminal Appeal No. 28 of 2010 (unreported), it was submitted that there is no cogent evidence which the prosecution presented, to prove that the 960 pellets which were examined by the Government chemist and proved to be Heroine Hydrochloride or Diethyl

Morphine were obtained from the socks underneath the appellant's underwear.

Mr. Ogunde then combined grounds of appeal number 3 and 4 together and faulted the trial judge for convicting the appellant despite the failure by the prosecution to abide by the principles governing chain of custody and preservation of exhibits. He blamed PW1 for failing to seal the substances in the presence of the police women who searched the appellant and for retaining the substances for several days before sealing. He also questioned the chain of custody from PW1 to the strong room of the RCO in Moshi and finally to the **CGC**. He also wondered why the samples claimed to have been found with the appellant remained at Moshi for a period of one month before being transmitted to the **CGC** in Dar es Salaam.

Elaborating, the learned counsel referred to the lack of chronological documentation showing how each stage of holding of the exhibit was done from seizure, custody, control, transfer, analysis right up to the exhibition in court. He referred us to the Police General Orders (**PGO**) No. 229 which under its provisions of Order 40 guide the handling of exhibits by the police from seizure to exhibition as evidence in court. He also referred us to a

copy in the written submissions of "A HANDBOOK FOR THE POLICE OFFICERS, 2010 (hereinafter referred to as "the Police Handbook") which contains similar provisions on chain of custody of exhibits by the police. He submitted that in the instant appeal, the police officers involved in the chain of custody failed to comply with their own internal guidelines provided under the **PGO** and the Police Handbook in Police General Orders (Order 40) directing documentation of chain of custody:

*"... whenever an exhibit is **passed away from the custody of one officer to that of another**, the officer who hands over the exhibit **must record in the presence of the later officer the name, rank and numbers of the officer to whom he hands over the exhibit** and the date and time of the handling over on the back of the exhibit label."*[Emphasis added].

From the perspectives of their own guidelines on chain of custody, Mr. Ogunde faulted the police officers who arrested the appellant and seized the substances they suspected to be drugs, for failing to make a full report of all the particulars of such arrest or seizure to his immediate official

superior as required of them under section 39 of the **Anti-Drugs Act** which provides:

39. Where any person makes any arrest or seizure under this Act, he shall, within forty-eight hours after such arrest or seizure make a full report of all the particulars of such arrest or seizure to his immediate official superior.

In reply, Mr. Kadushi informed the Court that he supported the conviction of the appellant. He contended that the learned trial judge reached the correct conclusion on chain of custody. While not doubting the binding effect of the decisions of the Court on chain of custody, he submitted that this instant appeal has unique facts distinguishing it from the precedents settled by the Court on chain of custody of exhibits. The learned State Attorney singled out for distinguishing, the decision of the Court in **Abuhi Omari Abdallah & 3 Others vs. R.** (supra). He submitted that in **Abuhi Omari Abdallah** (supra) the prosecution witnesses failed to show where the exhibits were stored for safe custody. But in the instant appeal before us, the safe custody of the exhibit was in

the strong room of the RCO. This was proved by Inspector Daudi Mathew (PW1), WP SGT Mwajuma (PW2) and other prosecution witnesses.

The learned State Attorney further submitted that from the custody of RCO in Moshi, the exhibit was received by Berta F. Mamuya (PW5) the Government Chemist who testified that she received 960 pellets. To confirm that the chain of custody successfully moved from the strong room in the RCO's office to the **CGC**, Mr. Kadushi pointed at the report (exhibit P2) which PW5 prepared. This report, the learned State Attorney submitted, proved several evidential matters. Firstly, it proved that PW5 received the specimen from a police officer, one F.117 D/C Jeromi. Secondly, after a chemical analysis, she confirmed that the 960 pellets she received contained "*Heroin Hydrochloride*" or "*Diacetylmorphine hydrochloride*" listed in Part One of the Poison list". Thirdly, the exhibit was handed back to F.117 D/C Jeromi together with exhibit P1. PW5' report (exhibit P2) states:

"YAH: MOS/IR/11863/2007"

Mnamo tarehe 28/1/2008 tulipokea kutoka kwa F.117 D/C Jeromi, bahasha iliyofungwa kwa lakiri ndani yake mkiwa na vielelezo kama ilivyotajwa kwenye PF. 180 yako yenye kumb.

Na. KR/CID/SCR/656/2007/01 ya tarehe 24/01/2008 ili tuchunguze na kukupa maoni ya kitaalamu.

Uchunguzi umefanyika na matokeo ni kama ifuatavyo:

KIELELEZO: KETE (960) ZENYE UNGA UDHANIWAYO KUWA NI DAWA YA KULEVYA

Kielelezo kimechunguzwa na kuthibitishwa kuwa kinayo dawa ya kulevya ijulikanayo kama "Heroin Hydrochloride" au "Diacetylmorphine hydrochloride".

...

*Uzito wa kielelezo ni gramu **62.12***

Kielelezo amekabidhiwa askari mwenye namb. F.117 D/C Jeromi.

B. Mamuya

sgd.

MKEMIA MKUU DARAJA LA I

Imethibitishwa na

sgd.

Mashimba, E.N.M. (Ph.D.)

MKEMIA MKUU WA SERIKALI"

...

Before concluding his reply, Mr. Kadushi had a final word on the sentence of 20 years which the trial judge passed on 22/9/2014. Should

the appeal by the appellant fail, he submitted, the Court should nevertheless order the sentence of twenty years to begin to run from 9/7/2012. This is the date the appellant was first sentenced in a Judgment of the High Court which this Court later on 30/6/2014 declared to be defective for imposing the sentence without convicting the appellant.

This is a first appeal from the High Court. As we have oftentimes said, when considering a first appeal to the Court, we conduct some form of a re-hearing of the evidence. The appellant before us on first appeal should expect from us re-evaluation of evidence, and the arrival at our own conclusions on her case: see- **Juma Kilimo vs. Republic**, Criminal Appeal No. 70 of 2012, (unreported).

As we have stated earlier, the main point of law calling for our re-evaluation of evidence thereon, is the chain of custody of narcotic drugs. On this point for our re-evaluation, apart from the internal police guidelines articulated by Mr. Ogunde, there are a considerable number and weight of precedents of this Court which are settled on the proposition that as custody of the evidence of exhibits move from one chain of custody to the next, the exhibits concerned must not only be properly handled, but each

such stage of custody through which the exhibits pass, must be documented till they are tendered in courts.

In **Swahibu Ally Bakari vs. R.**, Criminal Appeal No. 309 of 2010 (unreported) while restating the importance of the integrity of the chain of custody to eliminate the possibility of the exhibits being tampered with; the Court cited its earlier observation about what a chain of custody is in the often quoted case of **Paulo Maduka and Others vs. R.**, Criminal Appeal No. 110 of 2007 (unreported):

*"..... the **chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic.** The idea behind recording the chain of custody ...is to establish that the alleged evidence is in fact related to the alleged crime - rather than, for instance, having been planted fraudulently to make **someone guilty.** The chain of custody requires that from the moment the evidence is collected, its very transfer from one person to another must be documented and that it be provable that nobody else could have accessed it..."*[Emphasis added].

In **Mussa Hassan Barie and Albert Peter @ John vs. R.**, Criminal Appeal No. 292 of 2011 (unreported) the appellants were found in recent possession of a laptop. When PW4 tendered this exhibit he told the trial court that he had earlier received it from one Melita Santaeli, who did not testify to tell the trial court where he got the laptop from. In its observation that the chain of custody of this exhibit since its seizure had been broken, the Court referred to **Paulo Maduka and Others vs. R.** (supra) and stated:

"...The chain of custody of the laptop (ExhP3) in this case is broken by the absence of Melita as a witness who would have told the trial court, where he got the laptop from and would have identified whether it was the same laptop which was handed over to him. Even PW4 did not tell the court who sold the computer to Hassan Ally. Confusion is added when HASSAN ALLY did not testify,..."

In **Magesa Chacha Nyakibali and Yohana Josia Manumbu vs. R.**, Criminal Appeal No. 307 of 2013 (unreported) the Spice Rite Hotel in Bunda was burgled by bandits and a shotgun was stolen. Later, two guns

and several machetes were recovered. One of the guns was exhibit PI. The Court made the following observation which is pertinent to the instant appeal before us:

"...the evidence is not clear as to how the shotgun subject of this case found its way to PW2 who eventually tendered it in court! As it is, by sequence of events there was a broken 'chain of custody' in the handling of the shotgun which raises doubts as to whether the gun exhibited in court was the same one as the one which was said to have been recovered at Rubana River!"

All the above authorities reiterate through various circumstances, the underlying rationale for ascertaining a chain of custody, which is, to show to a reasonable possibility that the item that is finally exhibited in court as evidence, has not been tampered with along its way to the court. With the above settled rationale in mind, we propose to determine whether in the instant appeal before us, we can track back the chain of custody of the suspected drugs from that moment it was seized from the appellant in the Police Station in Moshi on 31/12/2007 after her body search, right up to 28/1/2008 when the samples were received by the **CGC**.

The following is a summary of the evidence pertinent to the question of chain of custody of substance which PW5 had confirmed to be narcotic drugs (Heroin Hydrochloride or Diacetylmorphine Hydrochloride) and which Inspector Daudi Mathew (PW1) tendered in the trial High Court as exhibit P1.

When appellant was arrested on 31/12/2007 along the Dar es Salaam Street in Moshi, she was taken to the police station where Inspector Daudi Mathew (PW1) ordered three police women to conduct a body search in the privacy of an office. PW2, PW3 and PW4 who conducted the body search found the appellant in possession of suspected drugs. SGT Mwajuma (PW2) who supervised that search stated:

*"...After the lady had undressed we saw something inside her underwear. WP Wanguzu removed it. It was a pack in black socks. After the search the accused dressed. Thereafter I asked WP Mariam to call Inspector Daudi so that he [could] see what we got out of the search. We showed the pack in black socks to Inspector Daudi in presence of the accused. The socks was opened and inside was a nylon bag with 960 pellets each tied in brown khaki paper. I remember the pellets because they are tied in the same brown paper. **The pellets were taken by Inspector Daudi for safe custody.** That was [the] end of my work."*[Emphasis added].

There is no doubt that the second link in the chain of custody after the three police women had seized the suspected drugs was Inspector Daudi (PW1) who stated:

"I took the parcel which ...was in black socks, I tore it and inside was a nylon bag packed with pellets tied in khaki paper. I opened one pellet and found whitish powder. I opened the second and third pellets and found whitish powder. This was done in presence of the accused and police officers present."

After the opening of the three pellets, PW2 who supervised the body search of the appellant, stated that: *"The pellets were taken by Inspector Daudi for safe custody."* And upon cross-examination, PW2 added: *"...Inspector Daudi took the drugs. He did not seal them."* WP Mwajuma's line of evidence is confirmed by Detective Constable Mariam (PW4) who, under cross examination stated: *"...The drugs were left with Inspector Daudi in the Office. I did not see Inspector Daudi sealing the drugs and I am not bound to order him to do so".*

It is not clear from evidence what Inspector Daudi (PW1) did with the suspected drugs after the three police women had left the office, specifically at what moment in time did he re-seal the three pellets and

other specimen for storage purposes. It was only in the course of his cross examination by Ms. Patricia Erick when PW1 seemed to suggest that he in fact sealed the envelope in the presence of at least Detective Jeroboam who later transported the specimen to the **CGC**:

"I and my assistants sealed the envelope so that it is taken to the Government Chemist. I was with Det. Constable Jeroboam who sent the specimen to Dar es Salaam. I do not remember if any other person was present."

PW1 conceded under cross examination that the sealing was not done immediately; it took several unspecified days later. He stated: *"The envelope was sealed some days after the arrest of the accused."* And without so much as explaining how and when, PW1 claimed that he then passed the chain of custody of the suspected drugs to the RCO. Under cross examination, PW1 stated: ***"The drugs were in the strong room in custody of the RCO"***.

With due respect to the learned State Attorney, we do not think the chain of custody in the instant appeal falls outside the parameters of the precedents of the Court. Looking broadly at the **Anti-Drugs Act**, the arrest of suspected drugs by the police in Moshi was anything but a first

step towards prosecution in courts. The second step is the determination as to whether, the substance which the police suspected to be narcotic drugs for the purposes of the **Anti-Drugs Act** is indeed the narcotic drugs. This determination is done by the **CGC** as exemplified by the evidence of PW5. Since there are two distinct levels through which suspected drugs have to pass to determine whether they are prohibited under the **Anti-Drugs Act**, it becomes all more important for the police to ensure proper custody of suspected substance and avoid tampering or contamination with other substances.

We think in our re-evaluation of evidence, PW1 broke down the chain of custody of suspected drugs. After opening three pellets, he spent several more days with unsealed substances suspected to be narcotic drugs. He did not specify when he sealed the specimen, and why he did not seal the same before the appellant and the police women who conducted the search. He did not also specify when he actually handed over the custody of the substances to the RCO as he alleged he did.

Assuming Detective Constable Jeroboam mentioned by PW1 during his cross examination was the same person as F.117 D/C Jeromi who allegedly delivered the sample to PW5, D/C Jeromi as an important link in

the chain of custody, was not called to testify. Because F.117 D/C Jeromi did not testify we cannot be assured of integrity of the drugs as it spent several days unsealed before it was moved from the custody of PW1 to the strong room in the RCO's office.

Apart from merely stating that the specimen was stored in the strong room of the RCO, the RCO concerned neither testified on the integrity of the specimen whilst in his 'strong room' nor were any documents exhibited to prove integrity of documents as it moved from PW1 to the strong room. It is not clear if PW1 maintained control and the integrity of drugs even when it was stored in the strong room. It is not clear who from the RCO's strong room, handed over the custody of drugs to F.117 D/C Jeromi for transportation from Moshi to the office of the **CGC** in Dar es Salaam.

In the circumstances like present one where the final determination (confirmation) of whether the substance concerned was narcotic drugs or not is done by another authority (**CGC**) independent of police; it was not enough for PW1 without documenting the chain of custody, to perfunctorily state that the exhibits were safely locked in a strong room of the RCO.

At very least, PW1 should have been guided by the **PGO** and the Police Force's own Handbook guiding police officers. As the suspected drugs passed from the custody of PW1 to that of the RCO, PW1 should have documented the passing over of custody by recording the name, rank and numbers of the officer to whom he handed over the exhibit and the date and time of the handling over on the back of the exhibit label. Similar documentation was required when the suspected drugs were taken from the strong room in the RCO's office and handed over to F.117 D/C Jeromi for transportation to the **CGC**.

It is clear from the evidence of the Government Chemist Grade 1; Berta F. Mamuya (PW5) that by the time the specimen of suspected narcotics reached the office of the **CGC**, its chain of custody had been irretrievably broken down whilst still in police hands. In her evidence in chief, PW5 stated:

*"...On 28/1/2008 I was in the office and **received a sample of drugs for examination. The drugs were in 960 pellets. The drugs are received at the reception but they are opened at Drugs section. The drugs are brought together with a letter from police and officials from Commission of Drug***

pack is inspected and sealed in their presence.

After counting the pellets contents are weighed, colour and laboratory test procedures conducted which ultimately confirms the nature or type of drug. After receiving the pack we weighed the contents and were 62.12 gm....”

In his written submissions, Mr. Ogunde attempted to cast doubt on the analysis of the 960 pellets of drugs. He would like us to believe his own conclusion that the Government Chemist (PW5) conducted only a single test, i.e. the “**colour test**” without the subsequent “**confirmatory test**”. The learned counsel wanted us to doubt whether exhibit P1 which the **CGC** returned confirming that the pellets contained “Heroin Hydrochloride” or “Dicetylmorphine Hydrochloride.” On our re-evaluation of the evidence, we found no reason to doubt the integrity of the scientific analysis conducted by PW5. The evidence clearly proves that upon their receipt at the office of the Government Chemist, the pellets were counted, weighed, and subjected to both colour test and confirmatory test in the “instrumentation room”.

Nevertheless, our concern remains on how the chain of custody was handled and documented by the police in Moshi, from the time PW1 was left with opened samples, how he sealed the same, before he transferred it to the strong room in the RCO's Office. Our concern is also how the suspected drugs left the strong room and handed over to F. 117 Detective Constable Jeromi for transportation to the **CGC**. In so far as we are concerned, it is here where the links in the chain of custody were broken irretrievably. Had the trial court evaluated the evidence on chain of custody, it could not have come to an unhesitating conclusion it did, that the chain of events depicted that the substances found on the appellant were kept in a verifiable chain of custody to assure their integrity before reaching the **CGC**.

It seems to us, decisions of the Court reiterating the duty to ensure the integrity of chain of custody, provisions of section 39 of the Anti-Drugs Act which require the police officers who seize suspected drugs to make a full report of all the particulars of such arrest or seizure to his immediate official superior, the Police General Orders, and the HANDBOOK FOR THE POLICE OFFICERS, 2010; are all designed to assure both the prosecution and the accused persons of the procedural justice in terms of fairness. To

(supra) to the instant appeal, fairness means ensuring that the suspected narcotic drugs found on the appellant on 31/12/2007, was the very one that was sent to the Government Chemist for analysis on 28/1/2008.

In light of the doubt created by the broken chain of custody, we shall resolve the doubt in the appellant's favour.

The appeal is allowed, conviction entered by the High Court is quashed and sentence of twenty years in prison and a fine of Tshs. 10,000,000/= are set aside. The appellant is henceforth set free unless otherwise lawfully held.

Dated at Arusha this 15th day of October, 2015.

E. A. KILEO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL