IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: RUTAKANGWA, J.A., KILEO, J.A., And MASSATI, J.A.)

CRIMINAL APPEAL NO. 455 OF 2015

VIVIAN EDIGIN..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Moshi)

(Sumari, J.)

Dated the 29th day of June, 2015
In
Criminal Session No. 36 of 2013

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JUDGMENT OF THE COURT

1st & 3rd August, 2016

KILEO, J. A.:

The appellant Vivian Edigin, a Nigerian national was intercepted at the Kilimanjaro International Airport on 22nd July 2012 as she was checking in en route to Italy via Ethiopian Airlines. Her interception was in connection to suspicion of possession of narcotic drugs. It was the prosecution case which consisted of a total of 18 witnesses that upon interception and checking the appellant she was found with 15 pellets in her bag which, upon examination by the Government Chemist turned out to be cocaine hydrochloride. Following her arrest the appellant was kept in observation and between 23/07/2012 and 26/07/2012 she excreted,

through her stool, 48 pellets which also turned out to be cocaine hydrochloride. The 63 pellets found in possession of the appellant weighed a total of 797.56 grams and were valued at Tshs 39,878,000/-.

The appellant's defence was initially a denial of the charge which was framed against her which was trafficking in narcotics contrary to section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act [Cap 95 R. E.2002] as amended by section 31 of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2012 (No 6). However at the end the appellant under oath in her own examination in chief admitted to have been found with the drugs. On the basis of the prosecution evidence and her own admission the appellant was convicted and sentenced to life imprisonment.

The appeal is against both conviction and sentence. The memorandum of appeal consists of five grounds. In essence the appellant's complaint is that the conviction was faulty because **firstly**, that the chain of custody was uncertain, **secondly,** that the chemical testing of the substance that the appellant was allegedly found with was not empirically proved and **thirdly,** that the evidence of the prosecution was conflicting. The appellant also complained against the sentence of life imprisonment which she claims that at the time of the commission of the offence the punishment for the offence she was charged with was

not life imprisonment. The ground on sentence was however abandoned by Mr. John Materu learned advocate who represented her at the hearing of the appeal. The learned counsel otherwise adopted the grounds in the memorandum of appeal which was filed by Great Harvest Attorneys. The respondent Republic was represented by Ms. Agnes Hyera learned Senior State Attorney. She vehemently resisted the appeal.

The matter is straight forward and it need not detain us. It has been made simpler by the appellant's own admission in the course of her defence of possession of what turned out to be cocaine hydrochloride.

Mr. Materu vainly tried to point out areas where he thought that there was a disconnection in the chain of custody. We however agree with Ms. Hyera that the chain of custody was not broken especially in so far as the 48 pellets which were excreted by the appellant were concerned. The evidence was so clear how each pellet was handed over to PW14 after it was excreted by the appellant, how she kept the pellets in the strong room and herself took them to the Govt. Chemist for examination. After the examination the pellets were sealed in envelopes by PW1 who tendered them in court. The rationale behind the chain of custody principle is to eliminate the possibility of implanting evidence against an accused person. In this case the evidence on record ruled out

that possibility. In any case, the most important piece of evidence in this case is the appellant's own admission of possession of the pellets which were identified as cocaine hydrochloride. There could have been no better evidence than that of the appellant who literally confessed her crime. She did so in court and in the course of her defence. It was observed by this Court in **Nyerere Nyague v. Republic**; Criminal Appeal No. 67 of 2010 (unreported) (quoting from **BLACK'S LAW DICTIONARY** 8th ed. **LEGAL MAXIMS** p. 1709) that "*a confession made in court is of greater effect than any other proof.*" The following is part of what the appellant said in her examination in chief:

> "*...Yes, the peels came from my stomach and were 49 in total. Yes I had to swallow them because of my family....I had no other way to earn, I had to do this so as help my family. I was called in the hotel and given and I swallowed them when in the hotel....*"

On cross examination she said:

> "*...The other one is the rolling bag which produced in court. This one passed in the X-Ray once in my presence. I could not count the pellets found in my bag. The pellets found in the bag resembles those I delivered from my stomach.*"

In response to questions put to her by the court she said:

"I expected to get money from the drug. Had I managed to submit it to a person required I would get money. I was to deliver in Rome Italy. .....Had I managed to reach Italy successfully I could find the receiver at the airport and could give me my money....."

In the light of all the above there can be no doubt that the appellant was found with cocaine hydrochloride weighing 797.56 grams and which were valued at Tshs 39,878,000/=. The only question now that requires our consideration is whether *cocaine hydrochloride*, the substance that was found with the appellant was a narcotic drug as per the Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95 R. E. 2002.

Mr. Materu argued that cocaine hydrochloride was not among the drugs that are listed in the first Schedule to Cap 95. He went further to say that it was only Cocaine (methyl ester of benzoylecgonine) which was listed. Ms. Hyera was however quick to point out that the Drugs and Prevention of Illicit Drugs Act defines narcotic drugs as *"any substance specified in the Schedule or* ***anything that contains any substance specified in that Schedule".*** [Emphasis provided] She insisted, and we are satisfied, correctly so, that cocaine hydrochloride squarely fits in the definition of narcotic drugs. The chemist (PW1) explained that cocaine's scientific name is methylester of benzol cogenene (sic!) What

appears in brackets after the term "cocaine" (methyl ester of benzoylecgonine) is cocaine's scientific name. Mr. Materu cannot, in the circumstances, by any stretch of imagination be correct to say that cocaine hydrochloride is not among the listed drugs.

Without much ado, we are settled in our minds that the trial court did not err in convicting the appellant of trafficking in narcotics drugs in contravention of the law. There is no cause whatsoever for us to interfere with the findings of the trial court. The appeal is without merit and for this reason we dismiss it.

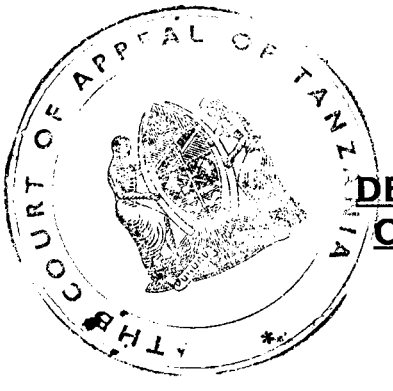
Dated at **Arusha** this 2nd day of August 2016

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

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



E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL