**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: MUGASHA, J.A., NDIKA, J.A., And SEHEL, J.A.)**

**CRIMINAL APPEAL NO. 15 OF 2017**

**MOSES MWAKASINDILE ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania at Mbeya)**
**(Levira, J.)**

**dated the 16th day of December, 2016**
**in**
**Criminal Sessions Case No. 54 of 2015**

.....

## JUDGMENT OF THE COURT

13th & 30th August, 2019

**NDIKA, J.A.:**

The appellant, Moses Amos Mwakasindile, along with Stephen Ndunguru, who is not a party to this appeal, were charged with trafficking in narcotic drugs contrary to section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic Drugs Act, Cap. 95 RE 2002 as amended by section 31 of the Written Laws (Miscellaneous Amendments) (No.2) Act No. 6 of 2012. The prosecution alleged that the appellant and his co-accused on 11th January, 2015, at Inyala Village within the District and Region of Mbeya Region, jointly and together, trafficked in narcotic drugs, to wit, 138 bundles of *catha edulis* commonly known as *mirungi* weighing 42.44 kilogrammes valued at Tanzania Shillings

Two One Hundred Twenty-Two Thousand (TZS. 2,122,000.00). After a full trial featuring nine prosecution witnesses and the appellant testifying upon oath in his defence, the High Court sitting at Mbeya (Levira, J.) convicted him of the offence as charged and imposed on him the mandatory life sentence. His co-accused was acquitted. Resenting the outcome of the trial, the appellant now appeals against both conviction and sentence.

We find it instructive to give a brief factual setting from which this appeal arises. PW1 Benjamin Darson was at the wheels of a FUSO passenger bus registered as T.664 BXQ (Exhibit P.2) on 10th January, 2015 on its scheduled trip to Mbeya from Dar es Salaam. His conductor was Stephen Ndunguru, who subsequently became the appellant's co-accused. The bus arrived at Iringa at 04:00 hours the following day. Shortly after leaving Iringa, the bus stopped on the way and picked a passenger who happened to be the appellant. That passenger's baggage was what is commonly known as a "sulphate bag." While the appellant sat behind PW1, his baggage was placed at the rear inside the bus.

When the bus reached Inyala in Mbeya at 07:45 hours, it was pulled over by police officers who included PW6 Assistant Inspector Masanyika and PW8 No. E.4182 D/Cpl. Horas. Both PW6 and PW8 got onto the bus and started

searching it as they had been tipped that on board that bus there was a passenger who was conveying drugs. The police laid their hands on the appellant's baggage, which, on being opened by PW8, 138 bundles of "leaves" were uncovered, packed in a sack retrieved from the sulphate bag. Each bundle was enveloped by newspaper sheets sealed by sellotape and tied by ropes made from banana leaves. The bundles were counted on the spot in the presence of the appellant, PW1 and passengers called Emmanuel Ndele (PW4) and Mahesa Nyerere. That baggage was then seized by the police who alleged that the bundles were a narcotic drug called *catha edulis* or *mirungi*. The appellant was arrested and taken to a police vehicle which subsequently ferried him to the Central Police Station at Mbeya. To evidence the confiscation of the baggage, a seizure certificate was tendered (Exhibit P.4) duly signed by the appellant, two independent witnesses (PW4 and the said Mahesa Nyerere) and PW6. It is noteworthy that this certificate was filled out and signed on 13th January, 2015.

On arriving at the Central Police Station later that day around 10:30 hours, the baggage was opened and the count of the 138 bundles was verified in the presence of the appellant, his co-accused, PW6 and PW8. Also present were a police investigator, No. E.382 D/Cpl. Simon, and the Exhibits Custodian,

No. G.2445 PC Daniel (PW2). In the end, PW2 took custody of the alleged contraband from PW7 and locked it in the Exhibits Room at the station. PW2 recorded that fact on the occurrence book, also referred to as diary.

PW7 adduced that on 13th January, 2015 he filled out PF.180 (a prescribed form for requesting analysis of substances) and wrote a letter referenced as **MBD/CID/B.1/1/VOL.XXV/141** to the Mbeya Branch, the Government Chemist Laboratory Agency (the GCLA) requesting an analysis and expert opinion on the contents of the seized baggage suspected of being a narcotic drug. He and PW2 took the baggage to the GCLA where, at 09:00 hours, they were met by PW3 Faustin John Wanjola, a Government Chemist Grade I, with expertise in plants. After PW3 had received the letter and PF.180, they opened the bag and counted the bundles of leaves to 138. PW3 weighed the bundles, which recorded 42.44 kilogrammes, and took samples from them. The bundles were then counted again and placed into the bag. PW2 and PW7 took the bag back to the station where it was, again, locked in the Exhibits Room.

PW3 tendered in evidence a report on the analysis of the 138 bundles dated 15th January, 2015 referenced as **MK/SHZL/S.10/14** – Exhibit P.1. It confirmed that the samples were, indeed, *catha edulis* or *mirungi*, a prohibited

narcotic drug. According to a certificate of value (Exhibit P.5) dated 3rd September, 2015 issued by the Commissioner for the National Coordination of Drug Control Commission, the seized drug at 42.44 kilogrammes was valued at TZS. 2,122,000.00. At the trial, the seized bundles in a sulphate bag were tendered and admitted as Exhibit P.3.

No. F.1013 D/Sgt. William was a police officer who interviewed and recorded the appellant's cautioned statement on 11th January, 2015 from 12:45 hours. He tendered the statement in evidence (Exhibit P.6). Although the defence strenuously objected to its admission, the learned trial Judge overruled the objection after she conducted a mini-trial and held that the confessional statement was made voluntarily. She also brushed aside the defence's contention that the statement was recorded outside the statutory basic period of four hours.

In his defence on oath, the appellant disassociated himself from the allegation by the prosecution. Even so, he admitted being on board the FUSO bus (Exhibit P.2) in the fateful morning but denied that the seized bag (Exhibit P.3) belonged to him. While admitting that he too had a sulphate bag containing a box, phones, phone accessories and receipts, he charged that the police got onto the bus at Itewe after they had pulled it over, with a bag

resembling his. He said he refused to sign the seizure certificate but he was tortured at the hands of the police who, then, made him sign many papers. He insisted that he did not convey any contraband when he was arrested.

The evidence of the appellant's co-accused, Stephen Ndunguru, tallied with the prosecution's version that the seized bag belonged to the appellant. He swore that the appellant was the only passenger who boarded the bus with a sulphate bag on that day. He denied being the appellant's partner in crime.

The assessors who sat with the learned trial Judge returned a unanimous verdict of guilty against the appellant but they opined that his co-accused was not guilty. The learned trial Judge sided with the assessors. Accordingly, the appellant was convicted and his co-accused acquitted, as stated earlier. In convicting the appellant, the learned trial Judge found that, based on the evidence of PW1, PW4, PW6 and PW8 as well as the cautioned statement, he was found on a bus at Inyala in Mbeya conveying 42.44 kilogrammes of *catha edulis*, which consignment, by his own confession, was destined for the neighbouring country of Zambia.

Aggrieved, the appellant, through the services of Mr. Victor Mkumbe, learned counsel, lodged this appeal on five grounds, namely:

1. *That the High Court erred in law and fact in convicting the appellant of the offence of trafficking in narcotic drugs when the chain of custody of the said drugs had not been set in motion from the time they were allegedly taken from the appellant on 11.01.2015 to the time they were sent for analysis by PW3 on 13.01.2015 and tendered as Exhibit P.3 on 06.09.2016.*
2. *That the High Court erred in law and fact in holding that the appellant was found in possession of 138 bundles of catha edulis, commonly known as mirungi, when there was quite insufficient evidence to that effect.*
3. *That the High Court erred in law and fact in not preparing a memorandum of the matters agreed and reading and explaining them over to the appellant as mandatorily required by section 192 (3) of the Criminal Procedure Act, Cap. 20 R.E. 2002.*
4. *That the High Court erred in law and fact in basing the conviction of the appellant on the certificate of seizure (Exhibit P.4) which was prepared and tendered contrary to law.*
5. *That the High Court erred in law and fact in basing the conviction of the appellant on the appellant's cautioned statement (Exhibit P.6) which was written contrary to the law.*

Before us at the hearing, Mr. Mkumbe, appeared for the appellant whereas Mr. Hebel Kihaka and Ms. Hanarose Kasambala, learned State Attorneys, joined forces to represent the respondent Republic.

In his oral argument, Mr. Mkumbe indicated that the appellant abandoned the third ground of appeal. He then adopted the contents of the written submissions that he had lodged in support of the appeal and then urged us to allow the appeal.

Briefly, on the first ground of appeal, Mr. Mkumbe forcefully submitted that the chain of custody of the seized contraband was broken as the corresponding chronological documentation was not tendered in evidence. He said that while it was alleged that PW6 handed over the seized baggage to PW2 at the police station and that an entry was made in the occurrence book to that effect, he was surprised that the said book was not tendered in evidence as proof of the change of hands of the seized baggage. That omission, it was argued, was prejudicial to the appellant. Further, it was argued that PW2 stayed with the seized contraband for two days from 11th January, 2015 to 13th January, 2013 when it was taken by him and PW7 to the GCLA. The baggage was so taken under the cover of a completed PF.180 form and a letter dated 13th January, 2013 referenced as **MBD/CID/B.1/1/VOL.XXV/141** but the said documents were not produced at the trial, again to the prejudice of the appellant as there was no proof that the GCLA acknowledged receipt of the seized bag. Another line of attack was that there was no detail on the condition

of the seized bag stored at the police station for two days before it was taken to GCLA. As it was not indicated if the bag was sealed so that it could not be interfered with in the course of its movement, the possibility of tampering could not be ruled out. There was no proof that the bag that was seized from the bus was the same that was handed over to PW2 and subsequently taken to the GCLA where samples were collected for laboratory analysis. To support his argument, the learned counsel cited **Paulo Maduka & Four Others v. Republic**, Criminal Appeal No. 110 of 2007 (unreported) where the Court insisted that chain of custody of an exhibit must be proven by producing the chronological documentation and or paper trail showing the seizure, custody, control, transfer, analysis and disposition of that exhibit.

Addressing the second ground of appeal, Mr. Mkumbe contended that there was no proof that the appellant was found with the seized bag. Citing the testimony of PW4 at page 46 of the record where that witness, when shown the seized bag (Exhibit P.3), said "the sulphate bag was not having these writings", Mr. Mkumbe contended that it was most probable that the sulphate bag that the appellant was allegedly found with was quite different from the one that was tendered in evidence. Even then, the said witness did not identify the bag by pointing out any peculiar features or marks, rendering his

identification as one made from the dock. He added that PW4 gave no proof that he was indeed a passenger on the bus as he admitted being on the bus without any ticket. He also urged us to draw adverse inference against the prosecution case for failing to produce the other witness to the seizure, one Mahesa Nyerere, in line with the principle in the decision of the Court in **Aziz Abdallah v. Republic** [1991] TLR 71.

In the fourth ground of appeal, Mr. Mkumbe attacked the certificate of seizure (Exhibit P.4). Apart challenging that it was unclear whether the said document was prepared by PW6 or PW8, the search was conducted by PW4 but Exhibit P.4 was signed by PW6. A further anomaly pointed out was that Exhibit P.4 was issued under section 38 (1) of the Criminal Procedure Act, Cap. 20 RE 2002 (the CPA), which requires that any search and seizure must be conducted by the Officer-in-Charge of a Police Station (OCS). None of PW4, PW6, PW7 and PW8 was the OCS of the Central Police Station. We were thus urged to expunge Exhibit P.4 from the evidence.

Addressing the fifth ground, it was argued that the cautioned statement (Exhibit P.6) was recorded after the basic period of four hours following the appellant's arrest had elapsed contrary to the dictates of section 50 (1) of the CPA. It was elaborated that the appellant was, according to PW6, arrested at

07:45 hours on 11th January, 2015 at Inyele but his statement indicates that it was recorded from 12:15 hours. As a result of this irregularity, Mr. Mkumbe pressed that the statement be discounted. In conclusion, the learned advocate implored us to allow the appeal.

Replying, Mr. Kihaka strongly opposed the appeal. On the first ground of appeal, he argued, based upon the evidence of PW1, PW2, PW4, PW6 and PW8, that the chain of custody was unbroken. He expounded that after the contraband was seized from the appellant at Inyala on 11th January, 2015, it was taken all the way to the Central Police Station, where, after being inspected and verified in the presence of the appellant, PW1, PW4, PW6 and PW8, it was handed over to PW2 who stored it in the Exhibits Room after making a corresponding entry in the occurrence book. Two days later, the seized bag was taken by PW2 and PW7, under a cover letter and a PF.180, to the GCLA where it was delivered to PW3 before it was opened and its contents verified. The absence of the relevant documentation holds no water, he added, as the contraband in issue is of a kind that does not change hands easily. To support his standpoint, the learned State Attorney cited our decisions in **Kadiria Said Kimaro v. Republic**, Criminal Appeal No. 301 of 2017; **Vuyo**

**Jack v. Republic**, Criminal Appeal No. 334 of 2016; and **Issa Hassan Uki v. Republic,** Criminal Appeal No. 129 of 2017 (all unreported).

As regards the second ground of complaint, Mr. Kihaka gave a short answer that the evidence of PW1, PW4, PW6, PW8 and DW2 left no doubt that the appellant was in possession of the contraband which he was conveying on the bus.

Moving to the fourth ground, the learned State Attorney submitted that the impugned certificate of seizure (Exhibit P.4) was unblemished. While the search was legally executed under section 42 of the CPA as an emergency search under the supervision of PW6, the certificate of seizure was prepared by PW8 but signed by PW6. We were thus invited to find that the certificate was properly prepared, tendered and admitted in evidence. It was further argued that even if the procedure was not properly followed, the anomaly involved did not prejudice the appellant and thus it ought to be ignored as the Court did in **Chacha Jeremiah Murimi & 3 Others v. Republic**, Criminal Appeal No. 551 of 2015 (unreported).

On the fifth ground, Mr. Kihaka too parted company with his learned friend. He argued that the time spent to convey the appellant from Inyala where he was arrested to the Central Police Station had to be excluded from

the four hours' basic period in terms of section 50 (2) (a) of the CPA. He thus said that as the appellant was arrested after the bus was flagged down by the police at Inyala at 07:45 hours on 11th January, 2015 as per the evidence of PW1, PW6 and PW8 and that it reached the Central Police Station at 10:30 hours, the basic period started running from 10:30 hours. Referring to the cautioned statement at page 246 of the record of appeal that it was recorded from 12:45 hours to 14.20 hours, the learned concluded that the said statement was perfectly valid. In the end, he urged us to dismiss the appeal in its entirety.

Having examined the record of appeal in the light of the submissions of the learned counsel, we are now in a position to delve into the grounds of appeal while mindful that this being a first appeal from the High Court, this Court is enjoined to re-evaluate the evidence and arrive at its own conclusions – see **D.R. Pandya v. R.** [1957] E.A 336 and **Juma Kilimo v. Republic**, Criminal Appeal No. 70 of 2012 (unreported).

We propose to determine the appeal by addressing the second ground of appeal first, and then proceed to confront the fourth ground before dealing with the first and fifth grounds in succession.

The question arising from the second ground of appeal is whether the appellant was found in possession of the bag (Exhibit P.3) alleged to have been seized from him on board the bus. On this question, Mr. Mkumbe contended, inter alia, that PW4 did not confirm at the trial that Exhibit P.3 was the one seized from the appellant nor did he allude to any peculiar marks on the bag and that there was no proof that PW4 was actually on board the bus when the seizure occurred. Conversely, Mr. Kihaka gave a short answer that the testimonies of PW1, PW4, PW6, PW8 and DW2, on the whole, left no doubt that the appellant was in possession of the contraband which he was conveying on the bus. In resolving the issue at hand, we examined the respective testimonies of PW1, PW4, PW6, PW8 and DW2 who said they were all at Inyala on the bus when the search was conducted. It is on the record that while PW1 and PW4 adduced that the seized bag belonged to the appellant, DW2 (the bus conductor) insisted that no passenger other the appellant had a sulphate bag. Although Mr. Mkumbe contended that PW4 did not confirm that Exhibit P.3 was the one seized from the appellant and that he did not cite any peculiar marks on the bag, that witness was recorded by the learned trial Judge at page 45 of the record to have recognised the bag and its contents as a whole as the baggage seized from the appellant at Inyala. Furthermore, PW6 and PW8 stated in unison that after the bag was discovered but before it was opened

they asked DW2 whose property it was and DW2 said it was the appellant's property. At least, going by the evidence of PW1, PW2, PW6, PW8 and DW2, the appellant did not, then, deny ownership of the baggage.

At any rate, in the circumstances of this case the question whether the baggage was the appellant's or not is one of credibility of witnesses and this Court will generally not disturb any finding of a trial court based on credibility of evidence, considering that the latter is in a better position to decide the question. The logic is that such trial court observed the witnesses' manner of testifying and deportment and so it was better placed to determine the question. As we find no exceptional circumstances to warrant disturbing the trial High Court's finding based on the believability of the witnesses, we find no merit in the second ground of appeal, which we dismiss.

Next for consideration is the fourth ground of appeal whose thrust is an attack on the certificate of seizure (Exhibit P.4) on the reason that it was prepared and tendered contrary to the law. Mr. Mkumbe's argument here was two-fold: one, that the search was conducted under section 38 (1) of the CPA by a police officer who was not an OCS, hence it was made without lawful authorisation; and two, that apart from not being clear whether the said certificate was prepared by PW6 or PW8, the search appears to have been

conducted by PW8 but Exhibit P.4 was signed by PW6. On the other hand, Mr. Kihaka contended that the impugned certificate of seizure (Exhibit P.4) was unblemished as it evidenced seizure of a contraband following an emergency search legally executed under section 42 of the CPA as an emergency search under the supervision of PW6 and that the certificate of seizure was prepared by PW8 but signed by PW6. We were thus invited to find that the certificate was properly tendered and admitted in evidence.

To deal with the complaint on the search and seizure of the baggage, we reviewed the evidence of PW6 and PW8. Briefly, PW6 adduced that while he was on police patrol he received a call from the Regional Police Commander (RCO0 at 05:30 hours in the morning on 11th January, 2015 alerting him to a call his superior officer had received from an informer that on board a Fuso bus with registration number T.664 BXQ (Exhibit P.2) travelling from Iringa to Mbeya a certain passenger was conveying marijuana. The RCO instructed him to arrest the suspected passenger. Acting on that instruction, PW6 dispatched the police patrol vehicle to Inyala to wait for the bus and meanwhile he took a private car and drove to Inyala along with PW8 and another police officer. PW8's evidence tallies with that of PW6, as he said he joined PW6 and another

police officer for the mission in Inyala after he was called by PW6 on phone around 05:30 hours.

According to PW6, the search that he supervised at Inyala was an emergency search under section 42 of the CPA, because it was not possible, in the circumstances of the case, to secure a search warrant and execute the search in terms of section 38 (1) of the CPA. We note that the learned trial Judge ruled, at page 77 of the record after the same issue was raised in the course of the trial, that the search was carried out as an emergency search under section 42 of the CPA. She reasoned that:

> *"I hold so because of the time the information reached PW6. It was early in the morning and the said bus was not stopped, it was still in transit. It is my view that if PW6 delayed, there was a possibility of failing to arrest the same. He was instructed to act immediately and I think, going to fetch a warrant could have delayed him."*

On our part, we wholly endorse the view of the learned trial Judge and find that, in the circumstances, the search was rightly carried out as an emergency search under section 42 of the CPA.

As regards the manner the certificate of seizure was prepared and issued, we think PW6 and PW8 sufficiently explained the position. The certificate of seizure was prepared by PW8 who is shown to have certified on it to have conducted the search at "Inyala Village in the motor vehicle Reg. T.664 BXQ Fuso Bus." Further, the certificate bears out that PW6 signed it as the Officer Executing order. It is significant that both PW6 and PW8 were consistent that PW6 carried out the search under the supervision of PW6. The certificate was duly signed by the appellant as well as two independent witnesses: PW4 and one Mahesa Nyerere. In the premises, we find no merit in the fourth ground of appeal. It stands dismissed.

We now address the first ground of appeal, which is a complaint that the chain of custody was broken from the time the contraband was allegedly taken from the appellant on 11th January, 2015 to the time it was sent for analysis by PW3 on 13th January, 2015 and tendered as Exhibit P.3 on 6th September, 2016.

On this issue, Mr. Mkumbe's argument, on the authority of our decision in **Paulo Maduka** (supra), is mainly that there was no chronological documentation and or paper trail, showing the seizure, custody, control, transfer, analysis and disposition of the contraband. Mr. Kihaka replied that

based upon the evidence of PW1, PW2, PW4, PW6 and PW8 the chain of custody was unbroken and that the absence of the relevant documentation was inconsequential.

Having taken account of the learned contending submissions on the contested issue, we carefully examined the evidence on record. It is on the record, based on the evidence of PW1, PW4, PW6 and PW8 that the contraband was seized from the appellant as he was travelling on board the Fuso bus (Exhibit P.2) on 11th January, 2015 in the morning at Inyala. DW2 too supported that fact. The certificate of seizure (Exhibit P.4), signed by the appellant, PW4, Mahesa Nyerere and PW6, also attests that fact. Thereafter, the seized bag was taken all the way to the Central Police Station, where, after being inspected and verified in the presence of the appellant, PW1, PW4, PW6 and PW8, it was handed over to PW2 who stored it in the Exhibits Room under lock and key after making a corresponding entry in the occurrence book. On 13th January, 2013, that is two days later, the seized bag was taken by PW2 and PW7, under a cover letter referenced as **MBD/CID/B.1/1/VOL.XXV/141** and a duly completed PF.180, to the GCLA where it was delivered to PW3 before it was opened and its contents verified. Again, on that occasion, the count was 138 bundles. After PW3 had weighed

the bundles and collected samples, the bundles were placed into the sulphate bag and handed back to PW2, who, along with PW7, took it back to the Exhibits Room for storage until 6th September, 2016 when it tendered in evidence by PW3. Prior to its tendering in evidence, PW3 had already issued an analysis report dated 15 January, 2015 referenced as **MK/SHZL/S.10/14** comprised in Exhibit P.1 confirming that the contents of the seized bag were a narcotic drug known as *catha edulis* or *mirungi*.

Admittedly, apart from PW2 and PW7 not producing any documentation corresponding with their handling of the seized baggage such as the occurrence book, the letter to the GCLA and PF.180, no detail was given on whether the seized bag was sealed or resealed in the course of its movement from seizure to the point it was exhibited in court at the trial. Nonetheless, we are of the view that the absence of such documentation is inconsequential for, at least, three reasons: first, although the letter and PF.3 that were submitted by PW2 and PW7 to the GCLA were not tendered in evidence, the GCLA acknowledged, vide the analysis report (Exhibit P.1), that the said documents requesting analysis of the contents of the seized bag were received. Secondly, it is on record that all persons who handled the contraband at different stages from seizure to the point when it was tendered and exhibited at the trial

appeared at the trial and adduced evidence on how the seized bag was handled, controlled and changed hands before it was admitted in evidence. Thirdly, while we appreciate the statement of principle as made in **Paulo Maduka** (supra) on the necessity of chronological documentation detailing on how an exhibit was seized, kept, controlled and changed hands, we think, as we held in **Issa Hassan Uki** (supra), **Vuyo Jack** (supra) and **Kadiria Said Kimaro** (supra), cited to us by Mr. Kihaka, that the said requirement must be relaxed in cases relating to substances which cannot change hands easily and therefore not easy to tamper with.

In **Kadiria Said Kimaro** (supra) and **Issa Hassan Uki** (supra), we referred to our earlier decision in **Joseph Leonard Manyota v. Republic**, Criminal Appeal No. 485 of 2015 (unreported), which involved the chain of custody of a motor cycle. The Court in **Joseph Leonard Manyota** (supra) stated that:

> *"... it is not every time that when the chain of custody is broken, then the relevant item cannot be produced and accepted by the court as evidence, regardless of its nature. We are certain that this cannot be the case say, where the potential evidence is not in the danger of being destroyed or polluted, and/or in any way*

*tampered with. Where the circumstances may reasonably show the absence of such dangers, the court can safely receive such evidence despite the fact that the chain of custody may have been broken. Of course this will depend on the prevailing circumstances in every particular case."*

Guided by the above standpoint, we are in full agreement with Mr. Kihaka that the contraband in issue is of a kind that does not change hands easily and that there was no danger of it being destroyed, polluted or tampered with. The claim that the seized bag was not sealed or resealed and that it was stored for two days from 11th to 13th January, 2015 before being taken for laboratory analysis to the GCLA is inconsequential. We are fortified in our view by the evidence of all persons that handled the seized baggage from seizure to its exhibition in court serves to assure that the bag was not interfered with. The first ground of appeal is without substance. We dismiss it.

Finally, we address the fifth ground of appeal, contending that the cautioned statement was recorded contrary to the law. The appellant's complaint here is that the cautioned statement (Exhibit P.6) was recorded from 12:45 hours on 11th January, 2015 after the basic period of four hours had elapsed following the appellant's arrest at 07:45 hours contrary to the dictates

of section 50 (1) of the CPA. On other hand, while Mr. Kihaka admitted that the statement was, indeed, recorded from 12:45 hours on that day following the appellant's arrest at Inyala roughly at 07:45 hours, the four hours' period ought to have been reckoned from 10:30 hours after the appellant arrived at the Central Police Station. It was his contention that the time spent to convey the appellant from Inyala to the Central Police Station had to be excluded from the four hours' basic period in terms of section 50 (2) (a) of the CPA.

In dealing with the issue at hand, we think we should extract the provisions of section 50 of the CPA, which govern the periods for interviewing persons who are under restraint, as hereunder:

> *"50 (1) For the purpose of this Act, the period available for interviewing a person who is in restraint in respect of an offence is–*
>
> *(a) subject to paragraph (b), the basic period available for interviewing the person, that is to say,* ***the period of four hours commencing at the time when he was taken under restraint in respect of the offence;***
>
> *(b) if the basic period available for interviewing the person is extended under section 51, the basic period as so extended.*

*(2) In calculating a period available for interviewing a person who is under restraint in respect of an offence,* ***there shall not be reckoned as part of that period any time while the police officer investigating the offence refrains from interviewing the person, or causing the person to do any act connected with the investigation of the offence–***

*(a)* ***while the person is, after being taken under restraint, being conveyed to a police station or other place for any purpose connected with the investigation;***

*(b) – (d) [Omitted]"* [Emphasis added]

We think that the above provisions are straightforward; they need no embellishing or interpolations. While subsection (1) above prescribes periods for interviewing a person who is in a restraint as being either the basic period of four hours commencing at the time when he was taken under restraint or the period extended in terms of section 51, subsection (2) excludes from calculating such period "*any time while the police officer investigating the offence refrains from interviewing the person, or causing the person to do any act connected with the investigation of the offence*" as enumerated by paragraphs (a) to (d). It is necessary that the periods prescribed by subsection (1) be read subject to the exclusions provided for under subsection (2).

Relevant to the instant appeal is the exclusion provided for under subsection (1) (a) above, that the period of time for conveying a person under restraint to a police station be left out. The law gives an allowance of time to the police for conveying a person to a police station because normally a person under restraint can only be interviewed at a police station.

Based on the evidence on record that the appellant, having been arrested at Inyala roughly at 07.45 hours and that he was thereafter conveyed to the Central Police Station, Mbeya where he arrived at 10:30 hours, the reckoning of the basic period of four hours for interviewing him commenced at 10:30 hours on that day. As it is common ground that the interview commenced at 12:45 hours and ended at 14:20 hours, which was well within the basic period of four hours, we are satisfied that the cautioned statement, by which the appellant confessed to trafficking in *catha edulis* or *mirungi*, was recorded within the allowed interviewing period. The trial court rightly relied upon that statement, above and beyond the other evidence discussed earlier, in convicting him. We thus find not merit in the fifth ground of appeal, which we, too, dismiss.

For the foregoing reasons, we do not find any basis on which to fault the findings of the trial court. The appeal is evidently bereft of merit. In consequence, we dismiss it in its entirety.

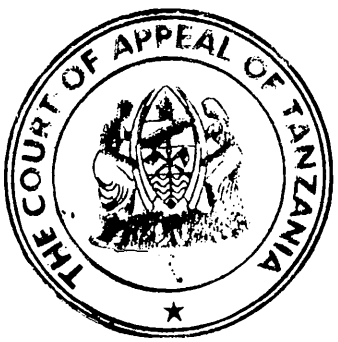
**DATED** at **MBEYA** this 30th day of August, 2019.

S. E. A. MUGASHA
**JUSTICE OF APPEAL**

G. A. M. NDIKA
**JUSTICE OF APPEAL**

B. M. A. SEHEL
**JUSTICE OF APPEAL**

The Judgment delivered this 30th041 day of August, 2019 in the presence of Ms. Xaveria Makombe and Zena James, learned State Attorneys for the respondent Republic and Mr. Gerald Msegeya holding brief for Mr. Victor Mkumbe, learned advocate for the appellant is hereby certified as a true copy of the original.




B. A. MPEPO
**DEPUTY REGISTRAR**
**COURT OF APPEAL**