IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MMILLA, J.A., WAMBALI, J.A. And LEVIRA, J.A.)

CRIMINAL APPEAL NO. 361 OF 2017

ABDALLAH RAJABU MWALIMU .... APPELLANT

VERSUS

THE REPUBLIC ....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Korosso, J.)

Dated the 28th day of August, 2017

in

Criminal Sessions Case No.17 of 2015

....

JUDGMENT OF THE COURT

29th April & 5th August, 2020.

WAMBALI, J.A.:

The High Court of Tanzanla which sat at Dar es Salaam convicted the appellant, Abdallah Rajab Mwalimu of the Offence of Trafficking in Narcotic Drugs contrary to section 16 (1) (b) (1) of the Drugs and Prevention of Illicitly Traffic in Drugs Act, [Cap.95 R.E.2002] ("The DPITDA").

The allegation laid in the information was to the effect that on the 4th February, 2011 at Julius Nyerere International Airport (JNIA), within Ilala District in Dar es Salaam Region, the appellant was found trafficking from the United Republic of Tanzania Fifty Four (54) pellets of narcotic

drugs namely, Cocaine Hydrochloride weighing 716.5 grams valued at Tanzania shillings Twenty Eight Million Six Hundred Sixty Thousand (Tshs. 28,660,000/=). The appellant had protested his innocence. Noteworthy, he was the only witness in defence of the allegation during the trial.

To support its case, the prosecution summoned ten witnesses and tendered eight exhibits. The substance of the prosecution evidence was that the appellant was arrested on 4th February, 2011 at 13.30 hrs. at JNIA while in the process of checking in for departure to South Africa by British Airways. Upon being suspected, he was held by the police and placed under custody at the Anti-Drug Unit (ADU) at JNIA offices (ADU-JNIA). The prosecution witnesses established that while in custody at JNIA at different intervals from 4th to 7th February, 2011, the appellant defecated 54 pellets that contained narcotic drugs. The defecation was witnessed by several officers both from the police force and other government departments who worked at the JNIA. Those pellets were sent to ADU office at Kurasini, Dar es Salaam where upon on 7th February, 2011 they were packed and sealed.

On 25th February, 2011, the said pellets which had been earlier on packed and sealed in the presence of the appellant and other witnesses were sent to the Chief Government Chemist (CGC) for analysis. As it

were, after the analysis it was revealed that the said 54 pellets weighted 716.5 grams and that the same contained narcotic drugs called cocaine hydrochloride. Moreover, the value of the said drugs was established by Certificate of Value (exhibit P7) that was prepared by the Commissioner for Drugs Control and Coordinating Commission at Dar es Salaam to be Tshs. 28,660,000/=. It was thus the testimony of the prosecution witnesses that the narcotic drugs were found in possession of the appellant who was in the process to traffic the same outside Tanzania via JNIA aboard British Airways.

In his spirited defence, the appellant denied categorically to have been arrested at the JNIA or being held in custody at that place from 4th to 7th February, 2011 in connection with trafficking the alleged narcotic drugs. He attributed his arrest to the fight which ensured between him and two Police officers who had taken his mobile phone and US Dollars 2,800. He also denied to have defecated the 54 pellets which contained cocaine hydrochloride. More importantly, he described all the prosecution witnesses to be unworthy of belief. Similarly, he discredited the exhibits tendered at the trial by the prosecution, contending that they had no connection with the case and that they were improperly admitted and relied upon by the trial court to ground his conviction.

At the conclusion of the trial, the trial court evaluated the evidence for both sides, and in the end it was satisfied that the appellant committed the offence and found him guilty as charged. Consequently, he was convicted and sentenced to imprisonment for twenty years and ordered to pay a fine of Tshs. 85,980,000/=. Subsequently, in terms of section 351 of the Criminal Procedure Act, Cap.20 R.E.2002 (the CPA) and section 46 (1) (a) of the DPITDA, the trial court also ordered the forfeiture, confiscation and destruction of the 54 pellets within twenty one days from the date of delivery of the judgment. The conviction, sentence and order of the trial court displeased the appellant, hence this appeal.

The appellant's disagreement with the decision of the trial court is expressed in a Substantive Memorandum of Appeal comprising six grounds of appeal, followed by other five grounds of appeal contained in the Supplementary Memorandum. However, upon thoroughly going through the said memoranda, and after we heard the parties, for purpose of convenience, we think the respective grounds can be compressed and paraphrased as hereunder: -

1. *That, the trial judge failed to scrutinize and assess the evidence of PW5 in the main trial and compare it with the inconsistence in the evidence of PW1 in a*

trial within trial along with the Observation Form (exhibit P4).

2. *That, the alleged envelope which contained 54 pellets (exhibit P5) was wrongly admitted and relied upon into evidence as it was tendered by PW2 instead of PW1.*
3. *That, the cautioned statement was wrongly admitted and relied upon into evidence while it was taken contrary to the provisions of sections 50, 51 and 57 (1) (a) of the Criminal Procedure Act, Cap. 20 R.E. 2002.*
4. *That, the Observation Form (exhibit P4) was wrongly admitted and relied upon into evidence despite the valiance in the names of the appellant when it is compared with names in other documents produced by the prosecution in the record of the trial court's proceedings.*
5. *That, the chain of custody of the handling of the 54 pellets (exhibit P5) was not properly established as required by the law.*
6. *That, the Commissioner for Drug Control and Coordinating Commission (PW8) who prepared the Certificate of Value for the purpose of the trial had no such powers under the provisions of section 27 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act Cap. 95 R.E 2002.*

7. *That the sentence imposed on the appellant by the trial court was excessive for failure to consider his mitigation of having stayed in remand custody before his conviction.*
8. *That the prosecution failed to prove the case beyond reasonable doubt.*

It is noted that the appellant also lodged a written submission in support of the grounds of appeal together with a list of authorities.

At the hearing of the appeal the appellant did not physically appear in court but was linked through video conference to Ukonga Central Prison. At the very outset he adopted his grounds of appeal and strongly pressed us to consider his written submission to determine the appeal. Essentially, he maintained that the learned trial judge wrongly misapplied the evidence in the record to conclude that he was guilty of the offence of trafficking in narcotic drugs while the prosecution failed to prove the case to the required standard. In the circumstances, he implored us to allow his appeal and set him free.

The respondent/ Republic was duly represented at the hearing by Ms. Elizabeth Mkunde, Ms. Batilda Mushi and Mr. Candid Masua, all learned State Attorneys. On her part, Ms. Mkunde strongly supported the decision of the trial court, contending that overall the complaints of the

appellant in all the grounds of appeal have no merits as the prosecution proved the case beyond reasonable doubt.

The thrust of the appellant's claim in ground one is that the evidence of Assistant Inspector Alphonce (PW5) in the main trial on what transpired on 5th February, 2011 at the JNIA after his alleged arrest in connection with the crime he was charged and convicted of is at variance with the testimony of Assistant Inspector Boniface Makwere (PW1) in a trial within a trial. In his submission, the variance casted doubts in the prosecution case which should have been decided in his favour by the trial court. To bolster his position, he made reference to the decisions of the Court in **Michael Haishi v. The Republic (1992) TLR 92** and **Lucas Kapinga and 2 Others v. The Republic (2006) TLR 274.** He therefore strongly implored us to find PW5 as an unreliable witness and thus disregard his evidence.

In response to the complaint in this ground, Ms. Mkunde submitted that the learned trial judge did not consider the evidence of PW5 and PW1 because while the former testified during the main trial the later testified during a trial within a trial. She contended that PW5's testimony in the main trial aimed to show how he witnessed the appellant defecating at the JNIA and that he signed exhibit P4 as he was present

on 5th February, 2011 during the incidence. According to the record of appeal, she argued, PW5's evidence in this issue was amply supported and corroborated by other witnesses including PW4, PW6, PW7 and PW9 who testified at the main trial and the appellant did not shake their evidence during cross-examination. On the contrary, she submitted, the evidence of PW1 during a trial within a trial in which no assessors were involved, aimed to prove that the appellant's cautioned statement (exhibit P8) was voluntarily recorded by Inspector Petro Maskamo (PW9) as required by law.

To support her submission on the purpose of trial within a trial, Ms. Mkunde referred us to the decision of the Court in **Amir Ramadhani v. The Republic,** Criminal Appeal No. 228 of 2005 (unreported). In the premises, the learned State Attorney concluded that the trial court could not have validly scrutinized, analysed and compared the evidence of PW5 in the main trial with that of PW1 in a trial within a trial together with the content of exhibit P4 as they aimed to serve different purposes. In the circumstances, she urged us to find that the complaint in this ground is unfounded and dismiss it.

On our part, we entirely agree with the submission of the learned State Attorney that the learned trial judge could not have validly

scrutinized, analysed and compared the evidence of the respective witnesses together with exhibit P4 and come to the conclusion that there was variance on what transpired on 5th February, 2011 at the JNIA after the arrest of the appellant. We have no hesitation to state that while the substance of PW5 evidence was on what transpired on that date concerning the defecation of the 13 pellets and how he filled and signed exhibit P4 in the presence of the appellant and other witnesses, the thrust of PW1's evidence during a trial within a trial was to establish that the appellant's cautioned statement (exhibit P8) was voluntarily recorded. We therefore find that the first ground is baseless and we hereby dismiss it.

With regard to the second ground, the appellant submitted in his written submission that exhibit P5 was wrongly tendered by Bertha Fredrick Mamuya (PW2) instead of SP Neema Andrew Mwakagenda (PW1) who was the proper witness who had kept the said exhibit in exhibit room after it was returned by PW2. He added that apart from that anomaly, it was the public prosecutor who tendered it in the course of PW2's testimony. In addition, he stated that there was also a second attempt by the public prosecutor to tender the said exhibit while it had already been tendered and that the request to withdraw the tendering was not sanctioned by the trial court. To support his submission on the

improper tendering of the exhibit by the public prosecutor he referred the Court to the decisions in **Kisonga Ahmad Issa and Another v. The Republic,** Criminal Appeal No.171 of 2016 and **Frank Massawe v. The Republic,** Criminal Appeal No.302 of 2012 (both unreported). Ultimately, the appellant argued that in view of the wrong tendering and admission of exhibit P5, the same should be expunged from the record as it could not be validly relied to ground his conviction.

On the adversary side, Ms. Mkunde submitted that exhibit P5 was properly tendered by PW2 instead of PW1 as she was the one who sealed it after the analysis at the CGC. Moreover, she argued that it is not the public prosecutor who tendered it as alleged by the appellant. She stated that after PW2 identified it, a prayer for tendering the said exhibit was made by the public prosecutor and the defence did not object. Thus it was tendered by PW2 and was admitted by the trial court. In her view, it was in that regard that the trial court thereafter followed a further procedure in which its content was explained by the PW2 and she was cross-examined by the appellant's counsel. Ms. Mkunde emphasized that exhibit P5 was not admitted twice as claimed by the appellant since the public prosecutor withdrew his prayer after it was noted that it had already been tendered in court by PW2 and received as evidence. Thus,

in her submission, the absence of an indication in the record of appeal that the trial court did not grant the prayer to withdraw the tendering of the said exhibit did not prejudice the appellant in any way. To this end, she urged us to dismiss this ground of appeal.

It is evident in the record of appeal that exhibit P5 was tendered during the testimony of PW2 (see pages 32-33). Our careful perusal indicates that it was PW2 who initially intimated her intention to tender the said exhibit and thereafter the Principal State Attorney who prosecuted the case prayed to the trial court for the prosecution to tender the exhibit. In our considered opinion, in view of the record of appeal, it is certain that the exhibit was tendered by the witness and not by the prosecutor as the appellant wishes us to believe. It is in this regard that after the said exhibit was tendered there was no objection from the appellant counsel and thus it was admitted into evidence by the trial court.

Indeed, even after it was admitted, PW2 was cross-examined by the appellant's counsel and explained fully what she did when she dealt with the said exhibit. We accordingly agree with the learned State Attorney that the appellant's complaint in this ground concerning the tendering of exhibit P5 by the public prosecutor is misplaced. Moreover,

we are of the settled opinion that the decisions of the Court referred by the appellant in support of this ground are distinguishable with the circumstances of this appeal. In those decisions, unlike in this appeal, it was categorically found that the respective exhibits were not tendered by the responsible witnesses but by the Public Prosecutors contrary to the established practice and law. On the other hand, we are satisfied that PW2 was the proper witness to tender exhibit P5 as she was the person who sealed it after the analysis to establish that it was narcotic drug and returned it to PW1 for safe custody before it was tendered at the trial. To this end, we dismiss ground two of the appeal.

In ground three, the appellant contends that the cautioned statement (exhibit P8) was tendered and admitted contrary to the requirement of the law. In the circumstances, he submitted in his written submission, that exhibit P8 was wrongly relied upon by the trial court to ground his conviction. In addition, the appellant specifically contends in this ground of appeal that exhibit P8 was wrongly admitted because; first that the exhibit was tendered by the public prosecutor instead of Petro Maskamo (PW9) who recorded it. Second, that the same public prosecutor initially assumed the role of the witness and tendered it for identification before it was formally tendered and admitted as exhibit. He

relied on the decision of the Court in **Selemani Abdallah and 2 Others v. The Republic**, Criminal Appeal No. 384 of 2006 (unreported) to support his argument on his point. Third, that exhibit P8 was recorded after the expiry of four hours contrary to the provisions of sections 50, 51 and 57 (1) (a) of the CPA. To support his submission, he made reference to the decisions of the Court in **Abdallah Ramadhani v. The Republic,** Criminal Appeal No. 219 of 2009 and **Joseph Shabani Mohamed Bay and 3 Others v. The Republic,** Criminal Appeal No. 399 of 2015 (both unreported). Fourth, that exhibit P8 was involuntarily recorded. In the result, the appellant submitted that exhibit P8 be expunged from the record of evidence for contravening the law.

On her part, Ms. Mkunde firstly argued that the complaint that exhibit P8 was involuntarily recorded is defeated by the fact that after the defence raised the objection to its admission, a trial within a trial was conducted and the same was overruled. She submitted that on that account the exhibit was properly admitted into evidence and relied upon by the trial court in determining the appellant's guilty. In addition, the learned State Attorney argued that the delay in recording exhibit P8 was fully explained by the prosecution witnesses including PW4, PW5, PW10 and the statement of DC Englebert (exhibit P.9) who could not testify as

during the trial he had passed away. All witnesses, she submitted, explained that as the appellant continued to defecate the pellets while under custody at JNIA it was not possible for PW9 to record his cautioned statement before the said exercise was completed. In the premises, she submitted that the provisions of section 50 (2) of the CPA was properly invoked by the trial court to come to the conclusion that there was no prejudice which was caused to the appellant considering the advanced reasons for the delay in recording the said statements.

To support her submission, Ms. Mkunde made reference to the decision of the Court in **Chacha Jeremiah Murimi and 3 Others v. The Republic,** Criminal Appeal No. 551 of 2015 (unreported) at page 5. Equally important, the learned State Attorney submitted that exhibit P8 was not tendered by the public prosecutor as alleged by the appellant as it was tendered by PW9 who later after its admission, read it over and explained its contents during cross-examination by the defence counsel.

Having heard the parties, we think, the complaint in ground three is not merited. As correctly submitted by Ms. Mkunde, exhibit P8 was properly tendered by PW9 and not by the Public Prosecutor as contended by the appellant. Indeed, the said exhibit was admitted after the trial court conducted a trial within a trial and found that it was voluntarily

recorded by PW9. We are also satisfied that the prosecution explained the reasons why the said exhibit was recorded after the expiry of four hours as provided by the law as the circumstances obtaining in this case warranted the trial court to come to the conclusion that the provisions of section 50 (2) of the CPA could come into play. We are also settled that the learned trial judge properly held that exhibit P8 was voluntarily recorded after she conducted a trial within a trial and ruled to that effect. We therefore, have no reason in view of the evidence in the record of appeal, to differ with her finding on this issue.

In the event, we are of the settled opinion that the decisions of the Court relied upon by the appellant in support of his contention in this ground cannot apply in the circumstances of this appeal. Consequently, we accordingly dismiss ground three of the appeal.

With regard to ground four, the epicentre of the appellant's complaint is that the Observation Form (exhibit P4) which was relied upon by the trial court to show that the appellant acknowledged to have defecated the 54 pellets (exhibit P5) in the presence of several prosecution witnesses had a name of Mwalimu Abdallah Rajabu while the information and other documents recognized him as Abdallah Rajabu Mwalimu. In his submission, this variance casted doubt as to whether it

was really the appellant who committed the offence as the names are different in the respective documents. Besides, he submitted, the prosecution did not explain away the doubts which were caused by that variance of names in the documents which were used to prove its case. The appellant therefore urged us to expunge exhibit P4 from the record of the proceedings.

The argument of the appellant was strongly countered by the learned State Attorney. Ms. Mkunde submitted that the difference in the names of the appellant was necessitated by the fact that after the appellant was arrested, the names which were used in exhibit P4 was those indicated in his travel documents, namely, the International vaccination card (exhibit P2), electronic travel ticket (exhibit P3) and his passport (exhibit P1) which started with his surname followed by the first name and then his father's name. She thus argued that when the charge was drafted when he was arraigned in the court at the preliminary inquiry and the information lodged at the trial court, the prosecution indicated the first name followed by his father's name and surname as has been the usual practice. In her view, it is in this regard that all other documents indicated the name of Abdallah Rajabu Mwalimu and not Mwalimu Abdallah Rajabu as indicated in exhibit P4. Ms. Mkunde

submitted further that all the witnesses, namely PW4, PW5, PW7 and PW10 who signed the Observation Form (exhibit P4) appeared to testify and identified the appellant as the one they saw at JNIA when he defecated the pellets. The witnesses also identified the appellant as Abdallah Rajabu Mwalimu who is also indicated in the other documents as Mwalimu Abdallah Rajabu. Besides, she submitted, the appellant did not raise any objection concerning the variance in the names at the trial. The learned State Attorney characterized the appellant's complaint at this stage of appeal as an afterthought since he did not denounce any of the respective documents at the trial and as a result they were properly tendered, admitted and relied upon into evidence.

We have considered the arguments of the parties in this ground and perused the evidence in the record of appeal and we are of the opinion that the complaint of the appellant is not justified at all. As correctly submitted by Ms. Mkunde, the difference in the arrangement of the names of the appellant in exhibit P4 and other documents, including the charge sheet and the information was necessitated by the fact that upon his arrest at JNIA, the names Mwalimu Abdallah Rajabu was used as it was consistent with the travel documents he possessed for the purpose of travelling. However, after the charges were preferred in court, the

appellant's names started with his first name followed by the father's name and surname. Indeed, as pointed out by the learned State Attorney, the difference did not prejudice the appellant in any way as all witnesses who witnessed when the appellant defecated the pellets which are indicated in exhibit P4 identified him at the trial as the one they saw at JNIA and that the names indicated in both documents belonged to the appellant. More importantly, as contended by Ms. Mkunde, the appellant did not raise any objection concerning the difference of his names when those documents were tendered before they were admitted during the trial. In the result, we find that ground four is unfounded and we accordingly dismiss it.

The fifth ground expresses the appellant's concern that the chain of custody was not properly documented as required by law from the date of his arrest to the period when it was tendered at the trial by PW2. The basis of the appellant's displeasure is premised on the following matters: **One**, that the seizure certificate was not tendered in compliance of section 38 (3) of the CPA to indicate that the 54 pellets were recovered from the appellant through defecation after he was arrested at JNIA. **Two**, that exhibit P2 was not a legal document prior to the enactment of Act No.5 of 2015 and therefore, it could not be relied upon to render

credence to the fact that the 54 pellets indicated therein were defecated by the appellant in the presence of the witnesses who are listed and alleged to have signed the same. **Three**, that there was no proper documentation to show that the pellets were packed at the scene of the crime since the evidence in the record indicate that the same was packed on 7th February, 2011 at ADU Office at Kurasini. **Four**, that no X-ray was conducted by the doctor at the JNIA or somewhere else to show that upon his arrest the appellant was diagnosed and found to have carried the said pellets on his stomach. **Five**, that the prosecution did not explain why it took almost two weeks, that is, from 7th to 25 February, 2011 from the alleged packing and of exhibit P5 until when the same was sent to the CGC for analysis. **Six,** that it was not established that the pellets which were recovered at the JNIA were the same as those which were sent to the CGC and produced at the trial as the witnesses failed to identify whether those they saw at the JNIA were the same as those they saw at the trial. **Seven**, that there was no compliance with P.G.O No.229 para 8 as PW5 failed to substantiate as to why the seized pellets were not labelled and sealed at JNIA and instead they were sealed at ADU Offices at Kurasini which was not the scene of the crime. The appellant therefore doubted the authenticity of the 54 pellets which were allegedly sealed at

ADU Offices contending that there is no evidence that those tendered and admitted at the trial were the same which were recovered at JNIA. He relied in the decision of the Court in **Slahi Maulid Jumanne v. The Republic**, Criminal Appeal No.282 of 2016 (unreported) to substantiate his arguments. **Eight,** that the prosecution failed to tender some relevant documents namely, the Occurrence Book (OB) and the Detention Register (PF16) and the letter requesting analysis from ADU (PF.180) to the CGC.

Overall, the appellant contended in support of this ground that, the prosecution failed to explain why there was failure to comply with police internal orders prescribed in the GPO. To support his submission, he referred us to the decision of the Court in **Director of Public Prosecutions v. Shiraz Mohamed Sharif,** Criminal Appeal No. 184 of 2005 (unreported).

To conclude his submission on this ground the appellant urged the Court to be inspired by the decision of Court in **Paulo Maduka and 4 Others v. The Republic**, Criminal Appeal No.110 of 2007 (unreported) in which it was emphasized among others, that *"the chain of custody requires that from the moment the evidence is collected its every transfer from one person to another must be documented and that it be proved that nobody else could have accessed it".*

Ms. Mkunde countered the appellant's submission by contending that all witnesses who testified concerning how the pellets (exhibit P5) were handled from the time the appellant was arrested demonstrated that the narcotic drugs which were recovered at JNIA were the same as those which were tendered at the trial. She maintained that there was no any possibility of mishandling of the pellets at any stage from the date of arrest until when the pellets were admitted into evidence at the trial.

She further submitted that the prosecution paraded witnesses namely, PW4, PW5, PW7, PW9 and PW10 who witnessed the defecation of the pellets by the appellant at JNIA after his arrest. She added that the other crucial witnesses are those who sent the pellets to the ADU Offices at Kurasini, the Store Keeper (PW1) who also sent them to CGC, those who witnessed the packing and sealing at ADU offices and those who analysed the pellets and later tendered the same in court. These are PW1, PW2, PW3, PW6 and PW7, she stressed. In addition, she argued that the appellant signed the observation form (exhibit P4) and witnessed the packing and sealing at ADU Offices at Kurasini and thus he cannot claim that the chain of custody was broken as the trial court found that all the witnesses were credible and reliable. PW1, PW5 and PW10, for instance, she submitted, testified how they followed the procedure to

ensure that the pellets were not tempered at all throughout the period they were in their custody. The learned State Attorney however contended that even in the absence of paper trail documentation, in the circumstances of this case, it indicated that there is no evidence that the pellets were tempered with at any stage prior to tendering at the trial court as amply demonstrated by prosecution witnesses. In her view, the decision of the Court in **Kadiria Said Kimaro v. The Republic,** Criminal Appeal No. 301 of 2017 (unreported) to the effect that oral evidence can also be relied upon to show that the pellets were not tempered with is relevant in the circumstances of the present case. In the premises, she submitted the decision of the Court in several decisions, including **Paul Maduka and 4 Others** is distinguishable. She maintained that all witnesses who witnessed the defecation and those who were involved in handling the pellets at all stages appeared at the trial, identified them and were cross-examined by the appellant's counsel and their credibility was not shaken.

Moreover, Ms. Mkunde submitted that the complaint of the appellant that there was a delay in sending the pellets to the CGC for analysis was fully explained by PW1. In her testimony, she stated, PW1 explained that the Head of the Anti-Drugs Unit was on safari during the

period stated by the appellant and thus it was not possible to send the pellets early as he was also a custodian of one key of the exhibit room where the pellets were stored. However, PW1 confirmed that the store in which the pellets were kept had three keys which were kept by her and the head of the Anti-Drugs Unit and thus it was not possible to be opened by one person a fact which prevented tempering by one of them. In her further submission, she stated that the packing and sealing at the ADU Offices at Kurasini was witnessed by Amina Mwinjuma Shoko (PW6), a ten cell leader who was an independent witness as she was not a police officer. She added that PW6 testified at the trial and she was not shaken during cross-examination by the appellant's counsel. In the circumstances, she implored us to dismiss the complaint that the chain of custody was broken.

From the submission of the parties, we are of the considered opinion that in the circumstances of the case at hand, it cannot be concluded that the chain of custody was broken in the absence of chronological documentation of paper trail of the handling of exhibit P5. We entirely agree with the learned State Attorney that the trial court properly believed the witnesses who gave a detailed account of how they witnessed the defecation of the pellets by the appellant, the packing and

sealing, the analysis and identified the same at the trial being the one they saw on the respective days previously. We are satisfied that one of the exhibits which were admitted at the trial court, that is, the observation form (exhibit P4) which was duly signed by the appellant left no doubt that there was no tempering at all. Therefore, as rightly submitted by Ms. Mkunde, even in the absence of paper documentation on how the pellets were handled from the time of arrest until when they were tendered in court, the oral evidence of witnesses who described how the pellets were handled from arrest to the time the same were tendered in court was sufficient proof. We reiterate the position we stated in our decision in **Kadiria Kimaro** (*supra*) concerning the importance of oral evidence in explaining the chain of custody depending on the circumstances like the one obtaining in this case. It follows that the decisions of the Court relied upon by the appellant to support his contention is distinguishable. There is no evidence that the 54 pellets were tempered with at any stage of the investigation of the case. We are also of the settled opinion that the argument that exhibit P4 was not a legal document does not hold water. We say so because what matters is the contents and the weight to be attached to that piece of evidence. Thus even though exhibit P4 was not prescribed under the law for that

particular time as being one of the form for collecting evidence, we are satisfied that in view of the evidence in the record the said exhibit served to show what transpired at JNIA concerning defecation of the pellets by the appellant which was witnessed by several persons who appended their names and signatures on the same. On the other hand, we find that in the circumstances of this case, failure of the police officers who arrested the appellant to strictly follow the PGO did not prejudice the appellant in any way as the processes on how the pellets were handled until when they were tendered at the trial and admitted into evidence was amply supported by their oral evidence. Besides, the said evidence was fully corroborated by other independent witnesses including PW4, PW7 and PW6 who witnessed the defection at JNIA and the packing at ADU offices at Kurasini respectively in the presence of the appellant. The evidence on how the pellets was transmitted to the CGC for analysis and how they were re-packed, sealed and labelled and returned to PW2 for safe custody is fully backed by exhibits P4, P5, P6 and the oral evidence of PW1, PW2 and PW3 respectively. As we have intimated above their evidence was not shaken by the appellant through his counsel. In the event, we dismiss the fifth ground of the appeal.

With regard to ground six, the complaint of appellant is that the Commissioner for Drugs (PW8) who also testified at the trial had no power to prepare the certificate of value (exhibit P8) of the said illicitly drugs by relying on section 27 (1) (b) of the DPITDA. In his submission, the prosecution failed to prove the vaiue of the illicit drugs which was important in this case.

On her part, Ms. Mkunde defended the application of the said provisions arguing that its application did not prejudice the appellant at all. To support her contention, she made reference to our decision in **Chukwudi Denis Okechukwu and 3 Others v. The Republic**, Criminal Appeal No. 507 of 2015 (unreported).

On our part, we entirely agree that as we stated in **Chukwudi Denis Okechukwu and 3 Others** (supra) the application of section 27 (1) (b) of the DPITDA did not prejudice the appellant in any way as far as the value of the illicitly drugs is concerned. We are satisfied that PW8 fully explained the bases of preparing exhibit P8 under that provisions. It is instructive to note that in **Chukwudi Denis Okechukwu and Others** cases, we remarked that the value of narcotic drugs assessed under that provisions was intended to serve both purposes; determining bail

application and assessment of sentence. In the result, we dismiss the sixth ground of appeal.

The other complaint of the appellant as portrayed in ground seven is that the sentence which was imposed on him by the trial court was excessive for not considering his mitigation. The appellant bitterly complained that the trial judge did not consider his mitigation which included the fact that he deserved a lenient sentence since he had been in remand custody for a considerable time before he was sentenced after he was found guilty and convicted.

In response, Ms. Mkunde submitted that the sentence which was imposed on the appellant was in accordance with the provisions of the law under which he was charged. She argued that the trial judge amply considered the appellant's mitigation, but in the end she could not remit the period he had spent in remand custody as she had no discretion since the punishment which was imposed is a statutory minimum. To support her submission, she made reference to the decision of the Court in **Vuyo Jack v. The Director of Public Prosecutions**, Criminal Appeal No. 334 of 2016 (unreported).

Having considered the complaint in this ground we are of the settled opinion that the same is baseless. As correctly pointed out by the

learned State Attorney, the sentence imposed by the trial court was in accordance with the law as it was the statutory minimum, the highest being life imprisonment. The trial judge therefore had no discretion to consider and remit the period of six years and a half which had been spent by the appellant in remand custody prior to his conviction. In the result, we dismiss ground seven of the appeal.

Lastly, in ground eight, the appellant submission is that overall the prosecution failed to prove the case beyond reasonable doubt. In his view, all prosecution witnesses were not credible as they failed to prove that he was involved in the commission of the offence of trafficking in narcotic drugs. The appellant also argued that upon his arrest he was not sent to the Hospital to undergo X-ray to show whether the alleged pellets were in his stomach. The appellant also stated that PW3 who examined the pellets did confirm that the same contained some salt and that no purity test was conducted. Generally, he submitted that the case against him was framed by police officers at JNIA who wanted money from him and as result fight ensued. He therefore pressed us to find that he was wrongly convicted and sentenced based on insufficiency evidence which is contrary to the requirement of the law.

On her part, Ms. Mkunde strongly argued that the trial court properly found that all prosecution witnesses were credible and believable and hence their evidence was rightly relied upon to ground the appellant's conviction. She submitted further that even the exhibits which were tendered at the trial left no doubt that the appellant was found in possession of illicit drugs which were confirmed by the office of the CGC to be cocaine hydrochloride as amply demonstrated by PW2 and PW3 together with a report of the analysis (exhibit P6). She refuted the appellant's complaint that the pellets contained salt as there is no evidence in the record of appeal to that effect. She maintained that there was also no need to conduct purity test as demanded by the appellant. In conclusion, she maintained that the prosecution proved the case to the required standard.

On our part, basing on what we have stated above with regard to the previous grounds of appeal, we have no hesitation to conclude that the prosecution proved the case beyond reasonable doubt. We are satisfied that the trial judge properly evaluated the evidence for both sides and in the end, she came to a right conclusion that the appellant did not raise reasonable doubt to the prosecution case. In the circumstances of this case, we are settled that the witnesses who testified

for the prosecution at the trial were credible and reliable to ground the appellant's conviction.

Indeed, the exhibits which were tendered at the trial rendered credence to the fact that the appellant was involved in the commission of the offence he was charged with and convicted of by the trial court. We further find that as the appellant defecated pellets immediately after his arrest, there was no need to refer him for X-ray examination. Besides, there is no law which mandatorily requires that such an examination should be conducted regardless of the circumstances in a particular case. Also there is no evidence in the record of appeal that the pellets contained salt as contended by the appellant. We have no doubt that PW2 and PW3 elaborated clearly their finding after they analysed the pellets in which it was confirmed that the chemical substance contained therein was cocaine hydrochloride as backed by exhibit P6. The testimony on how the pellets were seized from the appellant after his arrest is also fully supported by his cautioned statement which was admitted as exhibit P8 and the statement of F.8835 DC Englebet which was admitted as exhibit P9. In this regard, in view of the evidence in the record of appeal it cannot be validly concluded that the prosecution case was not proved to the required standard as claimed by the appellant.

Consequently, basing on the above deliberation with regard to all grounds of appeal, we find the appeal lacking in merit. In the result, we dismiss it in it's entirely.

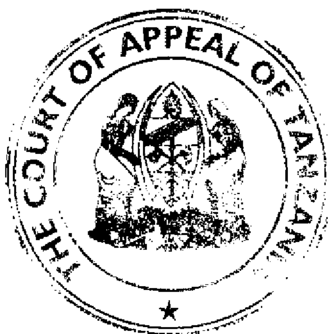
DATED at **DAR ES SALAAM** this 4th day of August, 2020

B. M. MMILLA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

C. M. LEVIRA
JUSTICE OF APPEAL

The Judgment delivered this 5th day of August, 2020 in the presence of the appellant - linked via video conference Ukonga Prison and Ms. Doroth Massawe, learned Senior State Attorney for the Respondent, is hereby certified as a true copy of the original.



B. A. Mpepo
DEPUTY REGISTRAR
COURT OF APPEAL