IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., KEREFU, J.A., And MAIGE, J.A.)

CRIMINAL APPEAL NO. 373 OF 2019

THE DIRECTOR OF PUBLIC PROSECUTIONS .....APPELLANT

VERSUS

STEPHEN GERALD SIPUKA.....RESPONDENT

(Appeal from the Decision of the High Court of Tanzania, the Corruption and Economic Crimes Division at Dar es Salaam)

(Mashaka, J.)

dated the 31st day of May, 2019
in
Economic Case No. 08 of 2019

JUDGMENT OF THE COURT

5th & 20th July, 2021

KEREFU, J.A.:

In this appeal, the Director of Public Prosecutions (the DPP), the appellant herein, is seeking to reverse the judgment of the High Court of Tanzania (Mashaka, J. as she then was) dated 31st May, 2019 in Economic Case No. 08 of 2019. In that case, the respondent was charged with two alternative counts. In the first count, he was charged with the offence of trafficking in narcotic drug contrary to section 15 (1) (b) of the Drug Control and Enforcement Act, No. 5 of 2015 (the Act) read together with paragraph 23 of the First Schedule to the Economic and Organized Crime Control Act,

[Cap. 200 R.E. 2002] (the EOCCA) as amended by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

In the alternative, in the second count, the respondent was charged with the offence of unlawful possession of narcotic drug contrary to section 15 (1) (a) of the Act read together with section 60 (2) and paragraph 23 of the First Schedule to the EOCCA as amended by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

It was alleged, in the particulars in both counts, that on 6th October, 2017 at Kitwana Manara Street Buguruni area within Ilala District in Dar es Salaam Region, the respondent was trafficking and/or found in unlawful possession of narcotic drug namely, Heroin hydrochloride weighing 226.06 grams.

The respondent denied the charge laid against him and therefore, the case proceeded to a full trial. After a full trial, the learned trial Judge found that the prosecution had failed to prove the case against the respondent and thus she acquitted him on both counts. Resenting the outcome of the trial, the appellant has lodged the current appeal.

At this juncture, we find it apposite to give a brief factual setting from which this appeal arises as discerned from the record of appeal. On the

night of 9th October, 2017 at around 01:00 hours, following a tip from an informer that the respondent was trafficking in narcotic drugs, A/Insp. Brown Mndeme (PW2), together with other officers from the Drug Control and Enforcement Agency (DCEA), namely, Titolaus, Samwel, A/Insp. Emmanuel, Zuwena and Selemani were dispatched to Buguruni Malapa, Kitwana Manara Street, Ilala District to conduct a search at the respondent's residence. PW2 testified that, upon arrival, they introduced themselves, explained the purpose of their visit and summoned the ten-cell leader of the area one Mhando Abdallah (PW4) to witness the search.

PW2 stated further that, in the course of the search, the following items were found; the whitish powder substance suspected to be narcotic drug kept in a black nylon paper bag and immersed in another black plastic bag; eight (8) folded small packets wrapped in a cream paper containing powder substance suspected to be narcotic drugs and three (3) packets wrapped in newspapers containing powder substance suspected to be narcotic drug. PW2 recalled that, from the eleven (11) packets, one had barks of trees *(magome ya miti)* and one had dried leaves. PW2 stated further that, they also retrieved one (1) packet in black nylon paper containing powder substance suspected to be narcotic drug, the respondent's National Identity Card, MNB ATM and Instant cards, Umoja

ACB card and two (2) mobile phones make Sumsung and Huawei, respectively. Then, the respondent was arrested and all items found were seized. PW2 prepared a certificate of seizure which was signed by him, the respondent and PW4 who was an independent witness. The certificate of seizure was admitted in evidence as exhibit P3 and the respondent's two (2) mobile phones, two NMB ATM Cards, one ACB ATM card and the National Identity card were collectively admitted in evidence as exhibit P4.

PW2 stated further that he handed over the seized items (exhibits P3 and P4) to H8843 D/C Optatus Kimunye (PW3) through a counter book used in handing over exhibits. In his evidence, PW3 confirmed to have received the said exhibits from PW2 on 6th October, 2017 at around 06:00 hours and at 11:00 hours he handed over the same to SP Neema Andrew Mwakagenda (PW6), the exhibit keeper, who recorded the particulars of the exhibits and registered them in the register.

PW3 went on to state that, it was PW6 who bagged the exhibits into envelopes and labelled them with letters 'A' to 'N' in the presence of the respondent, Jackon Jonas Ligoha (PW5) and placed all the envelopes into one big khaki envelope. PW3 stated further that on 9th October, 2017 he was instructed by PW6 to take the said exhibits to the Government

Chemistry Laboratory Authority (GCLA). He testified that there was a letter from the Commissioner of Operations of the DCEA and a special Form signifying the transmission of the exhibits to the GCLA for examination. He said that, at the GCLA, the exhibits were received by Glory Shida Henji (PW7) who recorded them in the GCLA Form and handed them to Elias Zakaria Mulima (PW1) for examination.

PW3 testified further that PW1 weighed and examined the items contained in all envelopes from 'A' – 'N' and found that the contents in envelop 'N' weighing 226.06 grams was narcotic drug known as heroin hydrochloride. Then, PW1 sealed the exhibits and handed them back to PW3 who returned the same to PW6 for storage. In his testimony, PW1 tendered one big envelope containing small envelops labelled 'A' to 'N' together with the GCLA laboratory report with Ref. No. 2821/2017 which were admitted in evidence as exhibits P1 and P2, respectively.

In his evidence, PW4, though he admitted to have witnessed the search and signed exhibit P3, he testified that the black plastic bags which he saw on the date of search were new while the ones submitted in exhibit P1 are worn out and old. PW4 stated further that even the powder substance inside envelop 'N' is not clear white, it has changed colour from

what he saw on the date of the search. PW4 went on to state that during the search he did not see envelop 'E' which contained a black powder substance. He further said that during the said search there were no pieces of dried leaves and barks of trees *(magome ya miti)* contained in exhibit P1. PW4 clarified further that during the search he witnessed three packets folded in newspapers, as listed in exhibit P3, but exhibit P1 indicated four packets which he did not see at the respondent's house on that material date.

In his defence, the respondent denied to have committed the offence and contended that the items seized from his house, as indicated in exhibit P3, were not those tendered in court vide exhibit P1. He clarified that, item No. 1 on exhibit P3 shows that the powder substance seized was white in colour while the one tendered in court in exhibit P1 in envelop 'N' contains powder which was khaki in colour. He further contended that the items seized from his house were not marked/labelled and sealed immediately after the seizure. He however agreed that the three ATM bank cards, two mobile phones and the National Identity Card were his.

As intimated above, after a full trial, and having scrutinized the evidence adduced by both parties, the trial court was of the firm view that

the chain of custody was broken and it thus acquitted the respondent on both counts on the finding that the prosecution had failed to prove the case against him to the required standard.

Aggrieved, the appellant lodged the current appeal. In the Memorandum of Appeal, the appellant has raised the following grounds: -

1. *That, the honourable trial Judge erred in law and in fact by holding that the chain of custody of exhibit P1 was broken on the ground that there was missing link between what was seized and what was analyzed and tendered in court;*

2. *That, the honourable trial Judge erred in law and in fact by holding that the discrepancies in the testimonies of prosecution witnesses go to the root of the matter to prove and establish the chain of custody;*

3. *That, the honourable trial Judge erred in law by holding that the chain of custody of the exhibit is only established by paper trail documentation from the time of seizure, handling, custody and production in court; and*

4. *That, the honourable trial Judge erred both in law and fact by failing to appreciate the weight of evidence given by the prosecution witnesses thereby ended in acquitting the respondent.*

At the hearing of the appeal, the appellant was represented by Ms. Sabrina Joshi and Mr. Candid Nasua, learned State Attorneys whereas the

respondent was represented by Messrs. Wilson Edward Ogunde and Andrew Alex Magai, learned counsel.

Submitting in support of the appeal, Ms. Joshi combined all grounds of appeal which essentially faulted the learned trial Judge's finding that the chain of custody for exhibit P1 was broken. According to her, there was sufficient oral account from prosecution evidence to explain on how exhibit P1 was seized, stored and finally tendered in court. To clarify that point, she referred us to the evidence of PW1, PW2, PW3, PW5, PW6 and PW7 and argued that those witnesses clearly testified on how exhibit P1 was seized right from the respondent's residence to the point when it was tendered in court. She argued that the chain of custody can be established by either documentation (paper trail) or oral evidence. To buttress her proposition, she cited the cases of **Abas Kondo Gede v. Republic,** Criminal Appeal No. 472 of 2017 and **Marceline Koivogui v. Republic,** Criminal Appeal No. 469 of 2017 (both unreported). She then argued that, since in this case there is sufficient oral evidence adduced by the prosecution witnesses to prove the chain of custody, the appeal should be allowed.

Upon being probed by the Court, on whether the prosecution witnesses were credible and reliable to establish the chain of custody, Ms. Joshi, though she admitted that there are contradictions in the testimony of

PW1, PW2, PW4 and PW6 as well as documentary evidence in exhibits P1 and P3 on the items seized from the respondent's house, she argued that the same are minor defects which do not go to the root of the matter so as to dispute that what was found in the envelop 'N' seized from the respondent's house was narcotic drug.

In response, Mr. Ogunde strongly contended that the chain of custody of the seized items from the respondent's house was broken, because the same were not labeled at the scene of crime but only listed in exhibit P3 which was signed by PW2, PW4 and the respondent. He contended further that the items listed in exhibit P1 are different from those in exhibit P3. It was his argument that, the discrepancies between the items in exhibits P1 and P3 raise doubts if what was submitted for examination to the Government Chemist were the same items seized from the respondent's house. To elaborate further on this point, Mr. Ogunde referred us to the testimony of PW4, who witnessed the search but disputed to have seen some of the items listed in exhibit P1, including the pieces of dried leaves, barks of a tree (*magome ya miti)* and the black powder substance contained in envelop 'E'.

Mr. Ogunde added that, PW4 also disputed the similarity of the colour of powder substance contained in envelop 'N' between what he saw on the

material date and what was tendered into evidence. He further referred us to the testimony of PW6 who testified that, on 6th October, 2017 when she received the said packet it contained a white powder, but later on 10th October, 2017 when she received it from the court clerk one Lukindo, she said, the substance had become solid and the colour had changed to cream. Mr. Ogunde submitted further that, upon cross-examination, PW6 tried to explain that the change of the colour might have been caused by weather and condition in the room where the exhibits were kept. Mr. Ogunde wondered, why PW1, who is a professional and an expert on the subject in this matter, did not say anything regarding the said change.

He further challenged the contention made by Ms. Joshi that the pointed-out contradictions are minor defects. According to him, the same are fatal defects which go to the root of the matter. In that regard, Mr. Ogunde distinguished the cases of **Abas Kondo Gede** (supra) and **Marceline Koivogui** (supra) relied upon by Ms. Joshi that they are not applicable in the circumstances of this case, as in those cases, the oral account of the prosecution witnesses was sufficient to establish the chain of custody, which, he said, is not the case herein.

Mr. Ogunde also questioned the chain of custody of the items seized from the respondent's house to DCEA offices, GCLA and finally to the court.

He wondered why the counter book, the exhibit registers and GCLA Form 001 used to record the movement of the said items were not tendered in court to prove the chain of custody. In addition, Mr. Ogunde referred us to the testimony of PW6 found at page 145 of the record of appeal where she failed to tender the signed labels for envelopes 'A' to 'N' to prove that what was submitted in court were the very same envelops in respect of this case. It was therefore the strong argument of Mr. Ogunde that having failed to produce a paper trail of the said items, there is no proof that the items seized from the respondent's house were the ones tendered in court as exhibit P1. To bolster his proposition, he cited the case of **Alberto Mendes v. Republic,** Criminal Appeal No. 473 of 2017.

As regards the DCEA Form No. 001 which was used to register and transfer exhibit P3 from DCEA to GCLA for examination, Mr. Ogunde informed the Court that, during trial PW1 attempted to tender the said document, but it was objected for not being listed in the list of documents to be relied upon by the prosecution. He submitted further that, though in the ruling rejecting admission of the said document, it was duly explained to the prosecution that, if still it intended to rely on that document, they could tender it by complying with the procedures. He emphasized that for the reasons not disclosed, they did not. On this, Mr. Ogunde argued that, since

the prosecution opted not to tender that document, which was necessary to prove the chain of custody, it cannot be said with certainty that, the items examined by PW1 and tendered before the court as exhibit P1 were those seized from the respondent's house. Based on his submission, Mr. Ogunde urged us to dismiss the appeal for being devoid of merit.

In a brief rejoinder, Mr. Naswa insisted that the chain of custody of exhibit P1 was not compromised. Though, he admitted that the issue of change of the colour in envelope 'N' was supposed to be explained by PW1 who is an expert in that area, he argued that the said omission was not fatal because it was stated in the oral account of PW6. As such, the learned State Attorney distinguished the case of **Alberto Mendes** (supra) relied upon by Mr. Ogunde by arguing that, in that case there was no sufficient oral account to link the chain of custody which is not the case herein. He then reiterated what they submitted in chief and prayed that the appeal be allowed.

Having carefully considered the rival arguments for and against the appeal, the grounds of appeal and the record of appeal before us, we now turn to consider the merits or otherwise of the appeal.

Before doing so, we wish to restate the salutary principles of law that, **one,** a first appeal is in the form of a re-hearing and as such, this being the

first appellate court, it is duty bound to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and if warranted arrive at its own conclusions of fact (see **D.R. Pandya v. Republic** (1957) EA 336 and **Iddi Shaban @ Amasi v. Republic**, Criminal Appeal No. 2006 (unreported)). **Two,** the credibility of a witness is the monopoly of the trial court, but only in so far as the demeanour is concerned. On the part of the first appellate court, the credibility of a witness can be determined in other ways namely, when assessing the coherence of the testimony of that witness and when the testimony is considered in relation to the evidence of other witnesses, including that of the accused person (see – **Shaban Daudi v. Republic,** Criminal Appeal No. 28 of 2001 (unreported)).

Since the grounds of appeal and arguments of the parties centered on the chain of custody, we wish to start by stating that, we are aware of numerous decisions of this Court which have put in place guidelines and factors to be considered when a chain of custody of an exhibit is under scrutiny. Some of the decisions have been cited to us by the learned counsel for the parties. We will however, add few, such as **Paulo Maduka and 3 Others v. Republic,** Criminal Appeal, No. 110 of 2007, **Zainab Nassor @ Zena v. Republic**, Criminal Appeal No. 348 of 2015, **Joseph**

Leonard Manyota v. Republic, Criminal Appeal No. 485 of 2015 and **Chacha Jeremiah Murimi and 3 Others vs Republic,** Criminal Appeal No. 551 of 2015 (all unreported). Specifically, in **Paulo Maduka and 3 Others** (supra) it was stated that: -

> *"By chain of custody' we have in mind chorological 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, it is stressed, is to establish that the alleged evidence is in fact related to the alleged crime rather than, for instance having planted fraudulently to make someone appear guilty."*

However, in the case of **Joseph Leonard Manyota** (supra), the Court went a further milestone and stated that: -

> *"It is not every time that when 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, polluted and/or in any way tampered with. Where circumstances may reasonably show the absence of such dangers, the court can safety 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."*

From the above cited authorities, it is settled law that, though the chain of custody can be proved by way of trail of documentation, this is not the only prerequisite in dealing with exhibits. There are other factors to be considered depending on prevailing circumstances in each particular case. In cases where the relevant exhibit can neither change hands easily nor be easily compromised then principles as laid down in the case of **Paulo Maduka** (supra) can be relaxed. In all circumstances, the underlying rationale for ascertaining a chain of custody, is to show to a reasonable possibility that the item that is finally exhibited in court and relied on as evidence, has not been tampered with along the way to the court.

In the case at hand, there is no dispute that on the night of 6th October, 2017 at around 01:00 hours, following a tip from an informer that the respondent is trafficking in narcotic drug, PW2 and other officers from DCEA conducted a search at the respondent's house. It is also not in dispute that the said search was, among others, witnessed by PW4 as an independent witness. It is also on record that, several items seized from the respondent's house were listed in the certificate of seizure (exhibit P3) signed by PW2, the respondent and PW4. PW2, after recording exhibit P3 in the DCEA counter book he handed over the same to PW3 at around 06:00hours. Then, at 11:00 hours, PW3 handed over the said exhibit to

PW6 who registered it in the exhibit register. PW6 bagged the exhibit into envelopes and labelled them with letters 'A' – 'N' and placed the said envelops into one big khaki envelop. On 9th October, 2017 PW3 took the said exhibit to the GCLA offices and handed over the same to PW7 and then to PW1 for examination. After examination PW1 gave back the exhibit to PW3 who returned it to PW6 and was later produced in court by PW1 as exhibit P1. During the trial, when PW4 was shown the items listed in exhibit P1, he testified that: -

> *"I have been shown exhibit P1 and I have opened the envelope and removed the envelopes inside. I see envelope 'N' with the mark DCEA/IR/17/2017.* ***The black plastic bag which I saw on the date of search were new plastic bags while these plastic bags are worn out and old. I have checked the powder substance inside and it is not clear white, it has changed colour from what I saw on the date of search,*** *it was white, I cannot state clearly the colour of the powder substance. I know it is not white, maybe it has changed colour, I do not know." [Emphasis added].*

As for other items listed in exhibit P1 which were not indicated in exhibit P3, PW4 testified at page 114 of the record of appeal that: -

"There were several pieces of packets which were found after the search and the ***exhibit P3 shows that what was found was powdered substance and not pieces of 'miti' or 'majani.' I did not see them, I saw and witnessed powdered substance. I do not know where these other items of 'miti, and 'majani' dried leaves came from. The pieces of paper which were folded were plain white, had no lines or anything on them.*** *According to exhibit P3, the powder substance found during the search and iater seized, were white in colour. Today, I have been shown exhibit P1 envelope marked 'N' the powder substance is not white it had changed colour to like khaki colour.* ***On the date of search no mark was placed on the items seized to provide proof that they are the same items which I have been shown here today in court. There were no marks or signs placed on the seized items.*** *If the powder substance which I saw on the search date do change colour then it is possible it has changed colour over time. But if not then,* ***this powdered substance shown today in court is not the same powdered substance which was found and seized from the respondent's house."***

Furthermore, PW6, the exhibit keeper, at page 138 of the same record of appeal testified that: -

> *"**On the 06/10/2017 when the packets were handed over to me by Optatus, the powder substance in envelop 'N' was white in colour.** I came to see the powder substance on the 10/10/2018 after I received the envelope 'N' and other envelops from the Court Clerk Lukindo. **When I checked the powder, it was not white, it was cream in colour.** On the 10/10/2018 when I received the exhibit from the Court Clerk Lukindo the substance in envelop 'F' had become solid and was not in powder form." [Emphasis added].*

From the above extract of the evidence of PW4, the prosecution independent witness who witnessed the search and signed exhibit P3, there is glaring inconsistency on the items seized from the respondent's house and those tendered in court by PW1 in exhibit P1. Furthermore, PW6 the exhibit keeper testified that the powder substance in envelop 'N' she received on 6th October, 2017 (exhibit P3) was white in colour, while the one she received on 10th October, 2017 (exhibit P1) was cream in colour.

Worse enough, it is on the record that the seized items were not labelled and sealed immediately after being seized from the respondent's house to enable PW4 identify them when tendered in court. In our view, the above pointed out contradictions among the prosecution witnesses, namely PW4 and PW6 go to the root of the matter. In the circumstances,

the evidence of PW4 and PW6 cannot be used to corroborate the evidence of PW1 in respect of exhibit P1.

We are mindful of the fact that in her submission, Ms. Joshi invited us to consider the oral account of the prosecution witnesses, as according to her the same is sufficient to establish the chain of custody of the seized items. With respect, we are unable to agree with her on this point. It is on record, and as correctly argued by Mr. Ogunde, the oral account of prosecution witnesses, in this case, is tainted with contradictions and inconsistencies, as indicated above, hence not credible and unreliable to establish the chain of custody which was as a result compromised. In this regard, we are increasingly of the view that, even the cases of **Abas Kondo Gede** (supra) and **Marceline Koivogui** (supra) relied upon by Ms. Joshi to support her position on the strength of oral account of prosecution witnesses in proving chain of custody are distinguishable from the circumstances of this case. In those cases, unlike here, we hold a strong view that the oral account of prosecution witnesses was credible and sufficient to establish the chain of custody. On the contrary, it is our considered view that the pointed-out inconsistencies herein are grave and go to the root of the matter to the extent of casting doubt on the prosecution case.

As regards, the paper trail, there is no dispute that it was only the certificate of seizure (exhibit P3) which was tendered to support the trail from the time the alleged items were seized. After seizure, though the said items passed through different hands, (from PW2 to PW3, from PW3 to PW6, from PW3 to PW7 and PW1), there is nothing in the evidence of PW1, PW2, PW3, PW6 and PW7 to show how and what was exactly received in those stages. The evidence adduced at the trial by the said witnesses is only that, at each stage of handing over the items/exhibits they signed in a handbook, a special Form and/or exhibit register. However, none of them were tendered in court to establish the chain and prove that claim. There were no reasons assigned by the prosecution on such failure which leaves a lot to be desired.

The trial court was not even availed with the DCEA special Form No. 001 which listed all items subjected for examination and handed over to the GCLA offices. This is regardless of the trial court's direction when it refused to admit the said Form for being tendered un-procedurally that, the same can be tendered by following proper procedures. Unfortunately, that was not done and no explanation was given for such failure. For the sake of clarity, we reproduce the trial court's order found at page 44 of the record of the appeal hereunder: -

"...I find that the special Form DCEA 001 which PW1 prays to tender as exhibit is not among the list of documentary evidence which the prosecution intended to rely on during trial. Consequently, objection raised by learned counsel for the accused is sustained. The prayer to admit special Form DCEA 001 as exhibit is denied. If the Republic intends to rely on the said document to follow the proper procedure."

As intimated earlier, the record is silent on the necessary steps taken by the prosecution to have that special Form DCEA 001 tendered and admitted in evidence. In our considered view, the failure to tender the said special Form had weakened the prosecution case and created a missing chain link between what was seized and what was sent to the Government Chemist and tendered and admitted in court as exhibit P1. On this, the prosecution has itself to blame having authored its own peril in respect of the doubts which marred its case.

In addition, even the signed labels for envelopes 'A' to 'N' were not tendered before the trial court to prove that what was tendered in court were the very same envelops seized from the respondent's house. In her own words PW6 who labelled the seized items for the first time and signed on the said labels testified at page 145 of the record of appeal that; -

"The accused person did not sign the small envelopes marked 'A' to 'N'... I paced exhibit label 'A' to 'N' on the packets together with the case file number. ***I did sign on the exhibit labels and even Mr. Optatus Kimunye signed on the exhibit labels and these labels are not here in court, they are in the office for our own office use."*** *[Emphasis added].*

The unanswered question on why the said exhibits labels were left at the office while the witness was pretty aware that she was to adduce evidence before the trial court on the case cast more doubts on the prosecution case. The learned trial Judge, having considering the above evidence together with all evidence adduced, tendered and admitted before it by both parties, from pages 422 to 423 of the record of appeal observed that: -

"The facts that the exhibits when they were seized were not marked by PW2 A/Insp. Brown, therefore the way they were handled is questionable. PW2 testified that they were packed in one envelope but the respondent denied the same. ***There is no proof of handing over the seized items from PW2 to PW3 and from PW3 to PW6.*** *As emphasized in the case of* ***Paulo Maduka and 4 Others v. Republic*** *(supra), if the seized exhibits were marked and sealed immediately after seizure, could have removed all the doubts... there is no doubt that the items/exhibits P3 handed over to PW6 SP. Neema, she is*

the one ***who marked and sealed them for the first time in the presence of PW5, who was not present at the respondent's house and at the DCEA office and by the time the exhibits reached the GCLA to be analyzed by PW1 its chain of custody had been broken down whilst in the DCEA hands.*** *From the foregoing reasons, I have no other option but to hold that the chain of custody was broken as there was a missing link between what was seized and what was analyzed and tendered in court as underscored in the case of* ***Chacha Jeremiah Murimi and 3 Others v. Republic*** *(supra)." [Emphasis added].*

We are in agreement with the above finding of the learned trial Judge. In view of the evaluation of evidence we have done above in respect of the chain of custody of exhibit P1 and P3, we hold a firm view that the chain of custody was compromised.

In the circumstances, we are also in agreement with Mr. Ogunde that the pointed out contradictions and inconsistencies in the prosecution witnesses with regard to the chain of custody cast doubts as whether the items seized from the respondent's house were the same items handed over to PW6, sent to Government Chemist and tendered at the trial. We are fortified in that regard in view of what we said in the case of **Chacha**

Jeremiah Murimi and 3 Others v. Republic, Criminal Appeal No. 551 of 2015 (unreported) that: -

> *"There should be assurance that the exhibit seized from the suspect is the same which has been analyzed by the Chief Government Chemist. The movement of the exhibit from one person to another should be handled with great care to eliminate any possibility that there may have been tampering of that exhibit. The chances of tempering in the Government Laboratory analysis should also be eliminated. Generally, there should be no vital missing link in handling the exhibit from the time it was seized in the hands of the suspect to the time of chemical analysis, until finally received as evidence in court after being satisfied that there was no meddling or tempering done in the whole process."*

In totality, we are satisfied that the learned trial Judge adequately evaluated the evidence on record and arrived at a proper conclusion that in this case, there are obvious glaring doubts in the prosecution case which should be resolved in the favour of the respondent. In the event, we find all grounds of appeal to have no merit.

For the foregoing reasons, we do not find any cogent reasons to disturb the findings of the learned trial Judge, as we are satisfied that the

evidence taken as a whole establishes that the prosecution's case against the appellant was not proved beyond reasonable doubt. Accordingly, we find the appeal devoid of merit and it is hereby dismissed in its entirety.

DATED at **DAR ES SALAAM** this 16th day of July, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 20th day of July, 2021 in the presence of Ms. Estazia Wilson, learned State Attorney for the appellant whereas Mr. Wilson Ogunde, learned counsel represented the respondent is hereby certified as a true copy of the original.

S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL