**IN THE COURT OF APPEAL OF TANZANIA**

**AT MOSHI**

**(CORAM: SEHEL, J.A., KEREFU, J.A. And MLACHA, J.A.)**

**CRIMINAL APPEAL NO. 328 OF 2020**

**JOAO CANDIDO DE OLIVEIRA.....APPELLANT**

**VERSUS**

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

**(Appeal from the Decision of the High Court of Tanzania, Corruption and Economic Crime Division at Moshi)**

**(Luvanda, J.)**

**dated the 10th day of July, 2020**
**in**
**Economic Session No. 02 of 2020**

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## JUDGMENT OF THE COURT

4th & 11th December, 2023

**KEREFU, J.A.:**

Joao Candido De Oliveira, the appellant herein, was charged with the offence of trafficking in narcotic drugs contrary to section 15 (1) (a) of the Drugs Control and Enforcement Act No. 5 of 2015 (the DCEA) as amended by the Drug Control and Enforcement (Amendment) Act. No. 15 of 2017 read together with paragraph 23 of the First Schedule to, and section 57 (1) of the Economic and Organized Crime Control Act, Cap 200 (the EOCCA) as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. It was alleged that, on 3rd October, 2018 at the Kilimanjaro

International Airport (KIA) Area, within Hai District in Kilimanjaro Region, the appellant trafficked in a narcotic drug, namely, cocaine hydrochloride, weighing 5.81 Kilograms.

The appellant pleaded not guilty to the charge. However, after a full trial, he was convicted as charged and sentenced to thirty (30) years imprisonment.

In essence, the substance of the prosecution case, as obtained from the record is to the effect that, the appellant, a citizen of Sao Paulo Brazil arrived at KIA on 3rd October, 2018 at 08:00 hours from Brazil via Dubai aboard Emirates Airline Flight No. FZ 0673. On that particular date, after he disembarked from the plane, completed immigration and arrival formalities, his luggage was taken to the scanning machine for inspection. In the course of inspection, the security officer, Salim Omary Mwaliza (PW4), who was controlling the scanning machine detected something suspicious inside the appellant's bag. PW4 summoned his in-charge, Jeremiah Peter Sarungi (PW3) and showed him the said image. PW3 also doubted the image and inquired from the appellant as to what he was carrying in that bag. It appeared to PW3 that the appellant did not understand the questions put forward to him. As such, PW3 used signs language to ask the appellant to

place his bag on the inspection table for inspection and the appellant complied.

Thereafter, PW3 called A/INSP Venance Gilbert Mndelwa (PW2) to proceed with the inspection exercise. Upon his arrival, PW2 also attempted to communicate with the appellant but in vain, as the appellant indicated that, he is only speaking Portuguese and does not understand English and Swahili languages. PW2 summoned Restituta Malamsha and Deodat Furaha to witness the search of the said bag together with PW3 and PW4. PW2, by using signs language, asked the appellant to open his bag and remove all items. The appellant complied. It was the testimony of PW2 that he inspected the bag by using his hands and came out with a black plastic bag which was underneath covered by a ceiling board. The said plastic bag contained white substance (flour) which had strong odour. PW2 suspected the substance to be a narcotic drug.

PW2 went on to state that, he measured the weight of the said substance together with its packing material and they weighed 6.1 Kilograms. PW2 seized all items found with the appellant and filled in the certificate of seizure which was signed by the witnesses except the appellant who was not conversant with the language used therein. The

items seized from the appellant included; his itinerary/electronic ticket (exhibit P3); identity card (exhibit P4); black mobile phone make LG (exhibit P6); a wad of banknotes of various denomination amounting to US$ 304, Tanzania Shillings notes of various denomination amounting to TZS. 50,000.00 and two Brazilian banknotes (Reais) (collectively admitted as exhibit P7); the brown bag and its tag (exhibit P2); passport (exhibit P5); boarding pass (exhibit P1) and the black plastic bag with white flour inside (exhibit P10). Then, the appellant together with the seized items were taken to the Police Post at KIA where PW2 handed over the seized items to No. D 6748 SGT. Peter (PW5), an exhibit keeper at KIA for custody.

Subsequently, PW2 informed the SSP Dotto Mdoe, Regional Crimes Officer (the RCO) about the incident and that the appellant is only conversant with the Portuguese. On the following day, i.e 4th October, 2018, the RCO availed an interpreter one Nelson Concalves who assisted the appellant with interpretation. Later, after the said interpreter had explained everything to the appellant and read the contents of the certificate of seizure to him in Portuguese, the appellant signed it. The said certificate was admitted in evidence as exhibit P12.

PW2 stated further that, he packed exhibit P10 in a khaki envelope, sealed and marked the same with symbols XY on top of the said envelop and indicated the name of the appellant together with the code - KIA/IR/100/2018. The packing exercise was witnessed by the appellant, Nelson Concalves (the interpreter), Harold Kifunda (the ten-cell leader) and PW5. He then handed over back the envelop to PW5 for custody.

On 5th October, 2018 at 09.00 hours, PW5 handed over the said envelope to PW2. The handing over between them was done through a handing over certificate (exhibit P13). Later, on the same date, PW2 handed over the said envelope to Joyce Njisya (PW1), a Chemical Analyst at the office of the Chief Government Chemist (CGC) along with a letter requesting for a chemical analysis of the substance. In her testimony, PW1 elaborated on how she received and analyzed the said substances. In particular, PW1 testified that, the said substance was handed over to her by PW2 through Form DCEA 001 (exhibit P8). She opened the sealed envelope, registered the exhibit with Lab. No. 2792/2018 and conducted the analysis. PW1 established that the said drug, weighing 5.81 Kilogram, was cocaine hydrochloride. The test was conducted in the presence of PW2 and another chemist who was at the CGC's Laboratory on that particular date. PW1 indicated the test results in the Report Lab. No. 2792/2018

Form DCEA 009 which was admitted in evidence as exhibit P9. PW1 repacked, resealed, and signed on top of the envelope and then re-handed over the same to PW2. Having completed his task, PW2 handed over the exhibits to DC Michael (PW6), an exhibit keeper at the office of the RCO, the Department of Narcotic Drugs. It was the testimony of PW6 that, he recorded the said exhibits into exhibit Register Book PF16 entry No. 190/2018 and preserved the same until when the same were tendered in court. The handing over between PW2 and PW6 was done through a handing over certificate (exhibit P11).

In his defense, although the appellant admitted to be found with all the items seized, he, initially, disowned the narcotic drugs (exhibit P10). He contended that, when his bag was on a conveyor belt at KIA, a padlock was already opened and he was told to pick and put it on scanning table for inspection. He was then directed to remove all items from the said bag and signaled to stand aside, where other people were summoned. Upon inspection, it was revealed that something had remained inside the bag. They removed it and found that black bag which had narcotic drugs. However, during cross examination, he admitted that, at Brazil he was requested by an anonymous person to carry the said bag to Kilimanjaro and convey it to someone else on promise that he would be paid US$

7,000.00 which was then equivalent to Brazilian Reais 42,000.00. That, due to his poor economic situation, he accepted the deal. It was his further testimony that, the said person paid for the costs of his trip including, his return ticket, accommodation and meals.

After a full trial, the learned trial Judge accepted the version of the prosecution's case which was supported by the defence evidence. As such, the appellant was found guilty, convicted and sentenced as indicated above.

Aggrieved, the appellant has preferred the present appeal. In his substantive memorandum of appeal lodged on 30th September, 2020, the appellant raised five grounds of appeal. In addition, on 21st November, 2023, he lodged a supplementary memorandum of appeal comprising five grounds making a total of ten grounds which raise the following main complaints: **one,** that the appellant was unfairly arrested, investigated, prosecuted and tried as he was only conversant with Portuguese and was not availed with an interpreter in most of the stages; **two**, failure by the trial court to ascertain the qualifications of an intended interpreter as to whether he was capable to properly interpret to enable the appellant fully involved during the trial; **three,** the evidence adduced by prosecution

witnesses was tainted with contradictions and inconsistencies, thus unreliable; **four**, the conviction was mainly based on the appellant's defence during cross-examination as the learned trial Judge failed to take into account that he denied the same during his defence in chief; **five,** the preliminary hearing was conducted contrary to the requirement of section 192 (3) of the Criminal Procedure Act, Cap. 20 (the CPA) as the memorandum of undisputed facts was not read over to the appellant; **six,** the learned trial Judge erred in convicting the appellant based on exhibits P9 and P10 which were unprocedurally admitted in evidence; **seven,** failure by the trial court to endorse the DDP's consent thus, the appellant was unprocedurally tried, convicted and sentenced; **eight,** the chain of custody of exhibit P10 was broken hence making it possible to be tempered with; and **nineth**, the prosecution case was not proved beyond reasonable doubt.

At the hearing of the appeal, the appellant entered appearance in person whereas the respondent Republic was represented by Ms. Dorothy Massawe, learned Principal State Attorney assisted by Mses. Jacqueline Werema and Grace Kabu, both learned State Attorneys.

It is noteworthy that, hearing of the appeal proceeded with the facilitation of an interpreter one Adel Mohamed who translated from Portuguese to Kiswahili and vice versa.

When given an opportunity to argue his appeal, the appellant adopted the grounds of appeal and submitted in general by admitting that all items seized by PW2 on the material date were found in his possession. Specifically, for the bag, the appellant submitted that, while in Brazil, he was requested by an anonymous person to carry it to Kilimanjaro and convey it to someone else on promise that he would be paid a huge amount of money and due to his economic situation, he accepted. He added further that, the said person paid for his return ticket, accommodation and all other costs related to his travel to KIA where he was arrested, charged and later prosecuted in court. He lamented that, since that time he has not managed to communicate with his family. He thus urged us to forgive him while taking into account the time, of almost five years, he spent in the custody and in remand prison. He added that, in his country, prisoners of his age (66 years and above), are normally being pardoned and given a lesser punishment. He thus urged us to consider all the grounds, allow the appeal and set him free.

On the adversary side, it was Ms. Massawe who addressed us first by stating the position of the respondent Republic of opposing the appeal. She then allowed her colleague, Ms. Werema to respond to the grounds of appeal. Upon taking the floor, Ms. Werema intimated that she will respond to the first and second grounds of appeal conjointly, third and fifth grounds conjointly and the rest of the grounds separately. We shall therefore determine the grounds of appeal, in the same manner as submitted by the respondent.

However, before doing so, it is crucial to state that, this being a first appeal, the Court is enjoined to re-evaluate the evidence and draw its own inferences of fact or conclusions subject to the usual deference to the trial court's findings based on credibility of witnesses – See **D.R. Pandya v. Republic** [1957] E.A 336 and **Juma Kilimo v. Republic**, Criminal Appeal No. 70 of 2012 (unreported). We shall be guided by the above principle in disposing this appeal.

We wish to begin our determination of the appeal by addressing the appellant's complaint in the first, second, fifth and seventh grounds of appeal, as they raise issues of irregularities in the trial court's proceedings.

Starting with the seventh ground on the appellant's complaint that he was improperly tried, convicted and sentenced on account of failure by the trial court to endorse the DPP consent which conferred jurisdiction to the High Court to entertain the matter.

In her response on this ground, Ms. Werema challenged the appellant's complaint that it is not supported by the record. To clarify her argument, she referred us to page 16 of the record of appeal where the consent of the DPP is indicated and argued that the same was received by the trial court on 4th May, 2020 and properly endorsed (stamped) by the Deputy Registrar of the High Court. She thus urged us to find that the trial court had the requisite jurisdiction to entertain the case and the seventh ground of appeal is with no merit.

Having closely considered the parties' submissions and examined the said document found at page 16 of the record of appeal, we agree with the submission advanced by Ms. Werema, as the record bears it out that the consent of the DPP was well communicated to the trial court vide a document which was received, endorsed and stamped by the Deputy Registrar on 4th May, 2020. Therefore, the trial court had the requisite

jurisdiction to entertain the case. We thus find the appellant's complaint under this ground unfounded.

On the first and second grounds, the appellant contended that he was unfairly arrested, investigated, prosecuted and tried due to his language barrier. That, he was only conversant with Portuguese and was not availed with an interpreter in most of the stages. He further contended that, even after an interpreter was secured, the learned trial Judge failed to ascertain his qualifications as to whether he was capable to properly interpret to facilitate the appellant's fully participation during the trial.

Responding to these grounds, although, Ms. Werema readily conceded that, during the arrest of the appellant on 3rd October, 2018, section 48 (2) (ii) of the DCEA was not complied with due to language barrier as the appellant could not communicate because he only spoke Portuguese which none of the arresting officers knew, she was quick to argue that the appellant was fairly arrested as he was fully aware on what transpired at the airport because he was arrested after being found in possession of suspicious item in his bag. Ms. Werema argued further that, after his arrest, on the following day, 4th October, 2018, the appellant was availed with an interpreter one Nelson Concalves who explained to him

what transpired, read the contents of the certificate of seizure in Portuguese and the appellant accepted its contents and signed it. It was her argument that, due to the circumstances obtained at the time of arrest, it was not possible for the prosecution to comply with the requirement of section 48 (2) (ii) of the DCEA as discussed in the case of **Lilian Jesus Fortes v. Republic**, Criminal Appeal No. 151 of 2018 [2020] TZCA 1936: [2 September 2020: TanzLII]. She thus, insisted that since, the appellant was aware on what happened and signed the certificate of seizure after its contents was translated to him by an interpreter, he was fairly treated. She added that during committal proceedings the appellant was availed with interpretation services of two interpreters namely, Franscisco Mulobuana and Salehe Ally and during the trial, he was accorded with interpretation services of one Killian Anthony Iyera and he properly marshaled his defence. To justify her argument, she referred us to pages 10, 19, 41 and 42 of the record of appeal.

Ms. Werema also challenged the appellant's complaint on the qualifications of the interpreters by arguing that, since throughout the trial the appellant was represented by an advocate and there is nowhere in the record of the appeal where the said advocate and/or the appellant complained about the qualifications of the interpreters, raising that

complaint at this stage, is nothing but an afterthought. She thus urged us to find the first and second grounds of appeal to have no merit.

Our starting point in determining these grounds, is on the long well settled principle that, not every procedural omission or error can vitiate the proceedings, some of them may be glossed over unless there is prejudice to the parties - see for instance the case of **Tongeni Naata v. Republic** [1991] T.L.R 54 and **Lilian Jesus Fortes** (supra).

There is no doubt that under section 23 (1) of the CPA and section 48 (2) (a) (ii) of the DCEA, the appellant had a right to be informed on reasons for his arrest and the nature of the charges he was being held. However, in the instant appeal, as readily conceded by Ms. Werema, the said requirement was not complied with. It was her argument that the appellant was not prejudiced as he was fully aware on what transpired at KIA because he was arrested after being found in possession of suspicious item in his bag. To verify this argument, we have revisited the evidence of PW4 and PW2, the arresting officer at KIA. At pages 63 to 64 of the record of appeal, PW4 testified that:

> *"On 03/10/2018 at 08:00 hours I was at my working place at the scanner machine KIA. While there, passengers were coming as usual, they were taking their bags at a conveyer*

*belt and bringing at my section at the scanner for inspection. While at the scanning machine, came one passenger and put his bag on the machine, it passed as usual. After passing that bag, I saw an image which created a slight doubt to me...Thereafter, I summoned my in-charge Jeremiah Sarungi...I showed him that image, he also created doubt on that image...My in-charge Sarungi, asked the passenger in foreign language English as to what he had carried in his bag, the passenger replied in a language we did not understand...he asked the passenger by signal to carry his luggage and put it on our table for physical inspection. That passenger was not arrogant, he took his bag and put on the table for inspection. Thereafter, my in-charge called a security officer at the airport one Afande Venance."*

Then, PW2 at pages 37 to 42 testified that:

*"On 03/10/2018 at 08:10 hours, I was at KIA my working place in a company of my colleague police officer D/SGT Juma, I was phoned a call (sic) by officer of TRA who was working there inside KIA -Airport one Jeremiah Sarungi, he asked me to go at arrival where passengers from various destinations are arriving...they saw image which they did not understood. I heeded to the call and proceeded there with my colleague D/SGT Juma...I came closer to that passenger, after I had exchanged greetings with him in English, he answered me by saying Portuguese meaning that he does*

*not understand other languages except Portuguese. I signaled him that I want his passport, he understood and took his passport from a pocket of his suit which he wore. I looked at that passport and saw a picture of that passenger and his name was Joao Candido De Oliveria...I looked on top of that bag and saw a tag number which resemble a number of a passport."*

PW2 went on to state that:

*"After seeing so, I phoned other witnesses to come for purpose of conducting search...I signaled the passenger to open his bag, he understood me, bended down and opened the bag by opening its zip. I asked him, to remove all clothes, he understood me, so he removed clothes and sports shoes...After peeping into that bag, we saw a ceiling board therein like had covered something inside. I inserted my hands and removed that ceiling board...I saw a small hole was teared... on observing it, I saw flour, it was white colour with a very strong odour or smell, I thought it was narcotic drug. After suspecting so, I prepared a certificate of seizure where I recorded all things... all witnesses who participated were satisfied and signed. So, for the suspect who was not conversant with our language we left his place blank."*

PW2 testified further that:

*"The following day, on 04/10/2018, at afternoon, the RCO came with one person (male), after arriving he introduced to me by a name Nelson Concalves, I cannot recall his nationality but he was conversant with Portuguese. So far, the suspect was in remand, he was removed (sic). I narrated to the interpreter the whole incident...After narrating to him, Nelson spoke to the suspect and gave me feedback that it is okay on what had transpired. Therefore, I took a certificate of seizure, I gave it to Nelson an interpreter to read it aloud to the suspect all things which were recorded therein if are correct. Nelson started reading aloud to Joao one item after another which were recorded in seizure certificate. He was reading in Portuguese. After reading, I asked Nelson to ask Joao if those items were correct, if they were seized from him. Nelson gave me feedback that he has asked Joao and said it is okay. I told Nelson who was his interpreter, if he is willing to sign the certificate of seizure which he did not sign before. After Nelson had spoken with Candido, Nelson gave me feedback that Joao Candido told him that he is willing to sign. I then gave him a certificate of seizure where Joao Candido signed."*

From the above excerpts, we find no difficult to agree with Ms. Werema's submission that, despite the language barrier and non-compliance with the above provisions, the appellant was not prejudiced as he was fully aware on what transpired at the airport. We find solace, in our

recent decision in **Lilian Jesus Fortes** (supra), where having been confronted with an akin situation and being guided by the above provisions, we observed that:

> *"We are not prepared to blindly apply section 48 (2) (a) (ii) of the Act as it stood before amendment, without sense of reason, while aware of the fact that what caused the noncompliance is language barrier. We take inspiration from section 23 (3) (a) of the CPA cited above to appreciate that there may be occasions such as the one in this case where full compliance becomes impossible. It occurs to us that doing otherwise may lead to absurdity whereby law enforcement agents may have to let go, genuine suspects who happen to speak foreign languages, just to guard against appearing like they denied them the right to a fair hearing. In this case we are satisfied that the appellant knew the reasons for her arrest and that, in our conclusion, cures the noncompliance."*

Furthermore, in **Wallenstein Alvares Santillan v Republic**, Criminal Appeal No. 68 of 2019 [2022] TZCA 516: [22 August 2022: TanzLII] when again, faced with an akin situation, we observed that:

> *"...considering the efforts made by PW5 to ensure that he communicated with the appellant immediately after his arrest, we hold that lack of specific indication in the*

*evidence on record that he was informed of the reason for his arrest cannot be held to have prejudiced him as he was legally arrested and made aware of the suspicion for being held."*

Similarly, in the instant appeal, as we have already intimated above, we are satisfied that, since the appellant knew the reasons for his arrest there is no prejudice caused on his part. We are of the further view that, even during committal and trial proceedings, the appellant was fully involved and properly marshaled his defence. As, indeed, the record of appeal bears it out at pages 10, 19, 41 and 42 that, during committal proceedings, the appellant was availed with two interpreters who interpreted from English to Portuguese (Fransisco Mulobuana) and Swahili to English (Salehe Ally) and during trial, he was assisted by Mr. Kilian Antony Iyera who interpreted from Kiswahili to Portuguese and vice versa. It is also on record at pages 82 to 85 of the record of appeal that, in his defence the appellant clearly narrated what transpired and on how he was approached by an anonymous person in Brazil who requested him to bring the said bag to Kilimanjaro and convey it to someone else on promise of being paid a lucrative sum.

As regards the appellant's complaint on the qualifications of interpreters, we have not discerned anything from the record indicating that the appellant and/or his advocate who was present at the hearing before the trial court raised any concern on that aspect. We are therefore in agreement with Ms. Werema that the applicant's claim at this stage, is nothing but an afterthought. As such, we find the appellant's complaint under the first and second grounds of appeal devoid of merit.

As for the sixth ground, the appellant contended that exhibits P9 and P5 were unprocedurally acted upon by the trial court as they were not received and properly admitted in evidence. Having perused the record of appeal, we agree with Ms. Massawe that the appellant's complaint on this ground has no basis and is not supported by the record, because at pages 32 to 34 of the record of appeal, it is clearly reflected that the said exhibits were properly tendered and admitted in evidence without any objection from the appellant's side. We equally find the sixth ground with no merit.

Back to the remaining grounds. We have observed that, the appellant's main complaint in the third, fourth, eighth and nineth grounds, is to the effect that the prosecution case was not proved to the required standard due to uncredible witnesses whose testimonies were tainted with

contradictions and that the chain of custody of exhibit P10 was broken hence making it possible to be tempered with.

Responding to these grounds, Ms. Massawe contended that there was no any contradiction in the evidence of prosecution witnesses and they were all credible witnesses. She argued that, the prosecution case was proved beyond reasonable doubt through the evidence of PW2, PW3 and PW4, the eye witnesses, who were at the scene and clearly narrated what transpired at KIA. She added that the evidence of those witnesses was corroborated by PW1, who examined exhibit P10 and by PW5 and PW6, the exhibits keepers at the KIA and RCO's office. She thus insisted that the evidence of PW1, PW2, PW5 and PW6 clearly narrated all the stages followed after seizure of exhibit P10 and properly established its chain of custody and sufficiently proved that the appellant was found in possession of the same. She argued further that exhibit P10 cannot be easily tempered with as claimed by the appellant. To support her proposition, she cited the case of **EX.G.2434 PC. George v. Republic**, Criminal Appeal No. 8 of 2018 [2022] TZCA 609: [6 October 2022: TanzLII]. She then added that, the prosecution evidence was supported by the appellant's defence who admitted to be engaged in that illegal transaction. She thus also urged us to find that the third, fourth, eighth and nineth grounds of

appeal are devoid of merit. In conclusion and on the strength of her submission, she urged us to find the appellant's appeal unmerited and dismiss it in its entirety.

Having carefully considered the submissions by the parties on the credibility of PW1, PW2, PW3, PW4, PW5 and PW6 and revisited their evidence, it is our settled view that the appellant's conviction was firmly grounded. We shall demonstrate.

In his evidence, PW4, who was controlling the scanning machine at KIA on the fateful date, clearly narrated on how he detected something suspicious inside the appellant's bag and on how he called his in-charge, PW3, who also doubted the said image and called PW2, the security officer at KIA to proceed with the inspection exercise. On his part, PW2 testified on how he inspected the appellant's luggage, discovered exhibit P10 and processed the certificate of seizure (exhibit P12). He also explained on how he handed over exhibit P10 to PW5, the exhibit keeper at KIA, then later, to PW1, the Government Chemistry for examination and finally, to PW6, the exhibit keeper at the RCO's office. The evidence of PW2 was corroborated by the evidence of PW1, who elaborated on how he received, analyzed and examined exhibit P10 and established that it was cocaine

hydrochloride. Furthermore, PW5 and PW6 testified on how they received exhibit P10, marked it and entered it into their respective Register Books (exhibits P13 and P14), preserved it until when it was tendered before the trial court.

It is noteworthy that, the movements of exhibit P10 from PW2 to PW5, PW2 to PW1 and PW2 to PW6 was clearly evidenced by handing over certificates/forms i.e exhibits P8, P11 and P13. We are therefore satisfied that the chain of custody of exhibit P10 was properly established by the evidence of PW1, PW2, PW5 and PW6. Indeed, it is also on record that the appellant was involved at the time of seizure and packing of the same at KIA and later at the RCO's office. There is nowhere in the record suggesting that he raised a concern that what he saw at the time of seizure and packing was different from what was tendered at the trial. It is therefore our settled view that the integrity and evidential utility of exhibit P10 remained intact.

On the alleged contradictions and inconsistencies in the evidence of prosecution witnesses, having revisited the evidence of PW1, PW2, PW3, PW4, PW5 and PW6, we agree with the submission of Ms. Werema that there is no any contradiction. In any case, and even if we assume that

such contradictions do exist, we still do not, with respect, consider them to be material to the extent of affecting the credibility and reliability of the evidence adduced by PW1, PW2, PW3, PW4, PW5 and PW6. It has been the position of this Court that contradictions by witness or between witnesses is something which cannot be avoided in any particular case due to frailty of human memory and if the contradictions or discrepancies in issues are on details, the Court may overlook such contradictions and discrepancies. See for instance the cases of **Dickson Elia Nsamba Shapwata & Another v. Republic,** Criminal Appeal No. 92 of 2007 and **Marmo Slaa @ Hofu & 3 Others v. Republic,** Criminal Appeal No. 246 of 2011 (both unreported).

We have as well noted that, in his defence at the trial court and even before us, the appellant, to a large extent supported the prosecution case, as he clearly admitted and narrated how he was found in possession of exhibit P10. That, at Brazil he was approached by an anonymous person to bring the said bag to Kilimanjaro and convey it to someone else on promise that he would be paid 7,000.00 USD which was equivalent to Brazilian Reais 42,000.00. He stated that, on account of his poor economic situation, he accepted the deal. The appellant stated further that the said person paid for his return ticket, accommodation and meals.

In totality and upon a careful re-appraisal of the evidence on record, we are satisfied that, the evidence taken as a whole establishes that the prosecution's case against the appellant was proved beyond reasonable doubt. In the event, we equally find the second, third, fifth, seventh and nineth grounds of appeal to have no merit.

Lastly, we have to consider the issue brought to our attention by Ms. Werema on the appropriate or otherwise of the sentence of thirty (30) years imprisonment meted out on the appellant. It was her argument that, since the appellant committed the offence in 2018, after the amendment of section 15 (1) of the DCEA by section 8 of the Drug Control and Enforcement (Amendment) Act No. 15 of 2017 which came into force on 1st December, 2017, he was supposed to be sentenced to life imprisonment and not otherwise. As such, Ms. Werema urged us to invoke our revisional powers under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 (the AJA) and revise the said sentence.

It is on record that the appellant was charged with economic offences governed and regulated by the EOCCA and the DCEA. Section 60 (2) of the EOCCA as amended provides that:

> *"Notwithstanding provisions of a different penalty under any other law and subject to subsection (7), a person convicted*

*of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both that imprisonment and any other penal measure provided for under this Act; Provided that; where the law imposes penal measures greater than those provided by this Act, the court shall impose such sentence."*

In addition, sub-section (7) of section 60 of the EOCCA provides for factors to be considered in assessing the sentence where mitigation is among them unless circumstances of the case do not allow.

Furthermore, section 15 (1) (a) of the DCEA, as amended by section 8 of the Drug Control and Enforcement (Amendment) Act No. 15 of 2017, provides that:

*"15 (1) Any person who –*

*(a) Trafficks in narcotic drug or psychotropic substance, commits an offence and upon conviction shall be liable to life imprisonment."*

As correctly argued by Ms. Werema, since the said amendments came into force on 1st December, 2017 and the offence was committed on 3rd October, 2018, it was an oversight on the part of the learned trial Judge to have not complied with section 15 (1) (a) of the DCEA.

In the circumstances, we invoke our revisional powers bestowed on the Court under section 4 (2) of the AJA to set aside the sentence of thirty (30) years imprisonment imposed on the appellant and replace it with life imprisonment.

In the upshot, save for the adjusted sentence, the appeal stands dismissed.

**DATED** at **MOSHI** this 9th day of December, 2023.

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

R. J. KEREFU
**JUSTICE OF APPEAL**

L. M. MLACHA
**JUSTICE OF APPEAL**

The Judgment delivered this 11th day of December, 2023 in the presence of appellant in person, unrepresented, Mr. Adel Mohamed the interpreter linked from Moshi High Court to Dar es Salaam via Video Conference facility and Ms. Dorothy Massawe, learned Principal State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.

G. H. HERBERT
**DEPUTY REGISTRAR**
**COURT OF APPEAL**