

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
ORIGINAL JURISDICTION
CRIMINAL SESSION CASE NO. 132 OF 2016

THE REPUBLIC

VERSUS

ALBERTO MENDES

RULING

Matogolo J.

This ruling is in respect of the objection raised by Mr. Jeremiah Mtobesya against PW1, Ernest Lujuo Joseph Isaka, the Chemistry who did analysis of the 85 pellets and who packed the pellets in an envelope/parcel, sealed it and stamped it. His objection is based on the ground that although the witness packed, sealed, signed and stamped the envelope/parcel is not the custodian of that envelop.

And that the PGO especially No. 229 directs how the exhibits in criminal cases should be kept until when will be tendered in Court. As the witness (PW1) is not the custodian of that exhibit, although he dealt with it, the same can only be admitted for identification by the witness. So, he prayed that the exhibit is not to be admitted.

On his part, Mr. Joseph Maugo, Senior State Attorney was of the view that; PW1 is the one who packed the parcel/envelop and handed it to Neema for safe custody as the law directs that exhibits in criminal cases should be kept at the police station. But that cannot prevent the present witness to

tender the exhibit as there is no hard and fast rule as to who should tender the exhibit in Court. PW1 is able to describe the exhibit which he dealt with. He explained in Court that the same appears as he handed it to Neema after sample analysis and packing. To support his argument he cited **Majid John Vicent @ Mlindamgabo & Abdul Selemani Hamisi @ Miburo** Cr. Appeal No. 264/2006 CAT at Mwanza.

Mr. Joseph Mugo–SSA prayed to this Court to admit the parcel/envelop as exhibit and not for identification he concluded.


The witness who is in the dock and who intends to tender the exhibit is the one who conducted analysis to the 85 pellets sent at the Chief Government Chemist for analysis. He is the one who opened the envelope before conducting analysis. After finishing his analysis, he packed the 85 pellets in the said envelop and sealed it. He also signed on it and affixed his official seal.

Then, he handed the parcel with the 85 pellets to Neema. It means that he know the way the parcel/envelop looked like before opening it, he know its contents and analyzed them, then he packed them in the same envelop, sealed, signed and stamped his official seal.

This is the proper witness in my view to tender the parcel although he is not the custodian of it. But he dealt with and knows its contents. Although there is a legal requirement for exhibits in criminal cases to be kept at the police station, but that alone cannot bar other witnesses to tender it in Court as at the Court of Appeal held in **Majid John Vicent @ Mlindamgabo** case (supra). There is no hard and fast rule as to who should tender the exhibit but for the witness at hand he adequately dealt with the exhibit and can

describe it perhaps more than any other witness. This qualifies to tender the exhibit/parcel. The objection by the defence counsel is hereby overruled. The envelope/parcel is admitted as exhibit P1.




F.N. Matogolo, J
Judge
18/05/2017