

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
CORRUPTION AND ECONOMIC CRIMES DIVISION**

**AT DAR ES SALAAM**

**ECONOMIC CASE NO. 06 OF 2018**

*(Originating from Economic Case No. 56 of 2017 of the Resident  
Magistrate's Court of Dar es Salaam at Kisutu)*

**THE REPUBLIC .....PROSECUTOR**

**VERSUS**

**ANA MOISES CHISSANO.....ACCUSED**

Date of Last Order: 12/11/2018

Date of Judgement: 11/12/2018

**JUDGEMENT**

**L.L. MASHAKA, J**

The accused person ANA MOISES CHISSANO is a Mozambican holding a passport number 13AE44258 charged with one count of trafficking in narcotic drugs contrary to section 15(1)(b) of the Drugs Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the First Schedule to the Economic and Organised Crime Control Act (Cap 200 R.E 2002) as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

It was alleged in the particulars of offence that, on the 16/11/2016 at Julius Nyerere International Airport (herein after referred as JNIA) within



Ilala District in Dar es Salaam region, the accused did traffic in narcotic drugs namely, cocaine hydrochloride weighing 3.03 kilograms.

On 18/06/2018 plea taking and preliminary hearing was conducted, whereby the accused denied the charge read over to her. A preliminary hearing was conducted pursuant to Rule 15 of the Economic and Organised Crime Control (the Corruption and Economic Crimes Division) (Procedure) Rules 2016, GN No.267 of 2016. During the preliminary hearing the following facts were not in dispute; firstly, the accused person's name is ANA MOISES CHISSANO, secondly accused is the passport holder of Mozambique passport no. 13AE44258, thirdly on 16/11/2016 accused was arrested upon arrival at JNIA by Ethiopian Airlines flight ET 827 and the rest of the facts were disputed.

The trial was conducted through an interpreter one HAMID ALLY MBAWA, who interpreted from Swahili to Portuguese language and vice versa, for the accused person fluently speaks and understands Portuguese language and did not understand well Swahili language.



To substantiate their case, the prosecution paraded a total of six (6) witnesses and tendered in Court seven (7) exhibits both documentary and physical whereas the defence called one (1) witness, the accused herself.

According to the testimony of Assistant Inspector Sophereth Masatu PW2, on 15/11/2016 as Inspector - in Charge at JNIA Police station, while performing his duties he received a phone call from Inspector Dickson Haule, Head of Investigation relying information that on board Ethiopian Airlines flight ET 827 which was to arrive at 1.00 am, there is a passenger who will arrive on board with the name of Ana Moises Chissano, a citizen of Mozambique and received the details of her passport with photograph

through WhatsApp application. He was further informed that in one of her bags, there were narcotic drugs.

He informed WP 5881 D/Cpl Sophia PW3 and G1782 DC Peter PW4 who were on duty about the information received. On 16/11/2016 at 1.00 am PW2, PW3 and PW4 went to the arrival area for International passengers to wait for the accused person arriving with Ethiopian Airlines flight ET 827. On arrival of flight ET 827 at 1.30 am, PW2 informed the immigration officers about their task and gave them the details of the accused person. After clearance at the immigration desk the accused person was handed to them. The accused had a hand bag and another black bag which could be carried on the back or pulled by its wheels. PW2 introduced themselves to the accused person and informed her that they do suspect her carrying narcotic drugs. That the accused admitted the two bags were her properties and was not carrying any narcotic drugs. PW2 checked the passport, boarding pass and ticket of the accused and confirmed that the details were the same as given by OC CID Inspector Dickson. PW2 took the accused and together with PW3 and PW4 escorted her into the ADU offices at JNIA premises just 5 metres from the arrival area. PW2 left the accused person with PW3 and PW4 and went to fetch independent witnesses to witness the search on the accused person. From the office of Immigration, PW2 got one Etines Msowerera and another independent witness was from the TRA office one Asha Ngemera PW5. PW2 introduced the two independent witnesses to the accused person in front of PW3 and PW4 and vice versa.



PW2 directed WP Sophia PW3 to conduct physical search of the accused person in the presence of independent witnesses while PW2 and PW4 left the room. Later PW3 came out of the office and informed PW2

and PW4 that the physical search was completed and found no traces of narcotic drugs on the accused. They both entered the office and in the presence of the two independent witnesses the bags were searched. In the small hand bag, they found 2 mobile phones, boarding pass, passport and ticket but there was no trace of narcotic drug. PW3 searched the other black bag and found two small blankets, which were removed but the bag was still heavy. PW2 ordered the whole team together with the accused to take the black bag for scanning at the x- ray scanning machine which is situated at the arrival area for international passengers. When the black bag was placed in the said machine detected that there was a black envelope in the bag. The team returned back to the office with the said bag. After entering the office, PW2 took a knife and tore the lining of the black bag, found some sponges and in between the sponges there was a black envelope. This exercise was conducted in the presence of PW3, PW4, PW5, the other independent witness and the accused person. PW2 used the knife and punched one corner of the black envelope and found a white powdery substance. When the accused was asked about the envelope, she replied that the bag was not hers, that she was given by a relative in Addis Ababa.



Then PW2 ordered WP Sophia PW3 to fill the seizure certificate to seize the exhibits found in the possession of the accused including the black envelope suspected to be narcotic drugs and it was signed by the two independent witnesses, the accused placed a right thumb print, PW2, PW3 and PW4. PW2 bought a brown envelope from one of the shops at JNIA and placed the black envelope in it, sealed it with a normal cello tape and a yellow cello tape and both PW2, PW3, PW4 signed on the brown envelope including the independent witnesses and the accused.

After accomplishment of the task, PW3 ordered PW2 and PW4 to remain with the accused person till morning and the exhibits, passport, ticket, boarding pass of the accused and certificate of seizure were kept by PW3. PW2 left the office to attend other tasks.

This testimony by PW2 was duly corroborated with the testimony of PW3 WP 5081 Sophia, PW4 G 1782 D/CPL Peter and that of PW5 Asha Ahmada Ngemera the independent witness. PW2 tendered Exhibit P4 collectively, that is the passport of the accused person and a flight boarding pass no. 07122 43557257 with flight no. ET 827 issued to the accused person on the 15<sup>th</sup> November 2016 showing arrival of the accused on November 16<sup>th</sup> 2016 at Dar es Salaam. Also, tendered Exhibit P5 the certificate of seizure form no. DCEA 003 dated 16/11/2016 which was filled by PW3 and he signed as the officer who gave the order for search and Exhibit P6 collectively which composed of the black bag with wheels, the two small blankets and the two white sponges. PW2 effectively identified the brown envelope which had inside the black envelope with the powder substance seized from the black bag of the accused person Exhibit P3 collectively as clearly described earlier and also identified the accused person in the dock as the person arrested and searched at the JNIA.



PW3 WP Sophia sworn and testified that, she was one of the arresting officers together with PW2 and PW4. That she was the one who searched the accused person and her bags. That after the bag was torn by PW2 she removed the black envelope from the bag in the presence of the independent witnesses, his fellow officers and the accused person. That she filled in the certificate of seizure, which seized the black envelope and the bags. PW3 corroborated the testimony of PW2 that she remained

with the accused person in their office together with PW4 and exhibits which were under her custody till morning. That at 5.00 am a motor vehicle picked them at the JNIA and took them to Terminal One Police station. On arrival at the Police station PW3 reported to OC-CID Inspector Dickson Haule who instructed her to take the suspect/accused person to PW6 E 370 D/CPL Jesias to record her statement. That PW3 handed over the following exhibits; the passport, boarding pass, the black bag and ticket to PW6 who is the Exhibit keeper.



Furthermore, PW3 and PW4 together went to the office of the Government Chemist Laboratory Authority (herein after referred as GCLA) for laboratory analysis of the powder in the black envelope placed in the brown envelope. At the GCLA they were received by PW1 Elias Mulima a Government Chemist Grade 1 approved by GN No. 519 of 2010. PW3 WP Sophia handed the letter, sample submission form No. DCEA 001 and the brown envelope having inside the black envelope suspected to contain narcotic drugs. PW1 opened the sealed brown envelope, inside he found the black envelope. PW1 opened the black envelope measured the powder substance and got the weight of 3.03 kilograms. PW1 took a sample of the powder substance, conducted a preliminary test and the results showed that it was cocaine hydrochloride. Then PW1 took another sample for the confirmatory test and resealed the exhibit the brown envelope in the presence of PW 3 and PW4 with a red cello tape and handed over the brown envelope back to PW3. Thereafter PW3 and PW4 returned to Terminal One Police station and PW3 handed over the brown envelope to PW6 the custodian of exhibits for safe keeping.

The testimony of PW4 corroborated that of PW2 and PW3 to the extent that they both arrested the accused, he witnessed the search of the bags

not the physical search of accused person. PW4 signed the certificate of seizure and witnessed when the black bag of the accused person was torn and the removal of a black envelope with white powdery substance inside. He was the one who was directed to write the names of the accused and all of them who witnessed on the brown envelope. He also testified that he remained with the accused in the Anti-Drugs Unit (ADU) office till morning hours and also together with PW3 took the brown envelope together to the office of Government Chemist office for further tests.

PW5 Asha Ahmada Ngemera in her affirmed testimony as the independent witness from Tanzania Revenue Authority (TRA), witnessed the physical search of the accused person and her bags being searched. She witnessed when the black envelope with powder substance was removed from the black bag taken from the accused person. She also signed the certificate of seizure and on the sealed brown envelope.

PW6 D/CPL Jesias testified that, he is the one who recorded the caution statement of the accused person who was placed under the arrest of PW3 for allegedly trafficking in narcotic drugs. He addressed the accused person in English language and she understood and agreed to give her statement. He was also the exhibit keeper and confirmed that PW3 WP Sophia handed over the items, which were seized from the accused person to him, the black bag, seizure certificate, passport issued by the country of Mozambique to the accused person, an envelope which contained money 2 notes USD 100 currency, one note 200 Togo currency and one note 50 Metical Mozambique currency, 2 mobile phones, air ticket with its boarding pass. PW6 confirmed that he kept all the items seized under safe custody in the exhibit room. He confirmed that on 16/11/2016 PW3 later came to his office and handed over to him an envelope

containing narcotic drug, brown in colour sealed with a yellow and red cello tape Exhibit P3 collectively. On the red cello tape, he read the word 'evidence'. PW3 informed him that the narcotic drug was found on the accused person and was required keep the brown envelope with narcotic drug as exhibit in the exhibit room and both signed handing over certificate Exhibit P7 which was filled by PW3. PW6 also identified the exhibits; Exhibit P3 collectively, Exhibit P6, Exhibit P7 which were under his custody being the sole officer in Charge of the exhibit room, up to the time they were tendered in court.



PW1, Elias Zakaria Mulima, a Government Chemist/Analyst Grade 1 at the office of the Government Chemist Laboratory Authority in Dar es Salaam, on 16/11/2016, PW1 received letter, a sealed brown envelope with yellow cello tape together with sample submission form no. DCEA 001 for analysis from PW3 WP Sophia. After receipt PW1 unsealed the brown envelope and inside, he found a black envelope, opened the black envelope and found inside white powdery substance. He weighed the powder substance alone using a special weighing scale known as laboratory balance and got 3.03 kilograms. Then he conducted a preliminary test using cobalt thiocynate reagent on the sample powder on a white tile, it changed its colour from white and became blue. The preliminary test was conducted in the presence of PW3. PW1 found the test revealed it was cocaine hydrochloride. PW1 took another sample and placed it in a special utensil and labelled it 1990/2016 for further test, the confirmatory test. PW1 then repacked the remaining powder revealed as cocaine hydrochloride in the envelopes and sealed it with a red cello tape, signed the sample submission form and handed over the brown envelope to PW3.



On 17/07/2017 PW1 conducted the confirmatory test using laboratory instruments for this particular specimen called gas chromatography which works to identify any type of chemical using reference standard and proved the white powder sample was cocaine hydrochloride. PW1 also confirmed that PW3 gave him a submission form and signed it. He tendered it in court and was admitted as Exhibit P1. He also prepared a laboratory report of the analysis, approved by the Government Chemist, stamped it with official stamp together with the laboratory number 1990/2016, which was admitted in court as Exhibit P2.

Upon the close of the prosecution case, the Court ruled the accused person had a case to answer.

The accused person gave her sole evidence without calling any other witness or produce exhibits to support his defence. In her sworn evidence through the Interpreter, the accused testified that prior to arrest she was an administrator of a hotel in Mozambique. That she went to Lome, Togo for a study tour to get more experience on management of hotels. She stayed in Togo for 4 days then travelled by Ethiopian Airlines via Addis Ababa to Dar es Salaam, Tanzania for continuation of her study tour. She left Togo on 15/11/2016 and arrived at JNIA Dar es Salaam on 16/11/2016 at 1.00am.



That while at the Immigration counter, filling immigration forms a male person came and told her that he wants to talk to her. She had a handbag brown in colour and another bag pink in colour. That in the hand bag there was her mobile phones and make up while in the other bag there were clothes and books for writing her stuff. That the man took the pink bag and she carried her brown hand bag. When they passed the immigration counter there were two other people standing a male and a

female and they left together and went to their office. That she entered the office with the woman and those two men left with her pink bag. The woman searched her body while the men were outside. That the two men came in the office again, with a brown and black bag, they took the bags and placed them on the table. When they searched the bag they found two small blankets for children. They closed the bag and all of them went to a machine. That she was standing a bit far from the machine. That the bag was placed in a machine but she could not see the outcome. They returned back to the office and one man went out and came with a knife. He gave it to the woman who tore up the bag and took out a black plastic bag. One man went outside and came back with a brown (khaki) envelope. He ordered the accused person to sign on the envelope and placed the black plastic envelope in to the brown envelope.



According to the accused person's testimony it was her first time to see the black bag. That she was locked in the room and the man and woman left. Later in the afternoon they came and took her to the police station. That she was taken to hospital for check-up and the results were in the envelope the doctor gave the police officer who took her there and they returned back to the police station.

That on 18/11/2016 she was taken to court before the magistrate. That the magistrate wrote something she could not understand the language used. That she stayed in prison for 9 months. That the magistrate decided to discharge her then she was arrested again and taken before the court. She was informed that she was facing charges in Economic Case No. 56 of 2017 and taken back to prison. The accused stated she was suspected for trafficking in narcotic drugs which is not true. She denied being

involved in trafficking in narcotic drugs and prayed to be acquitted and her items to be returned to her.

During cross examination the accused admitted that though she did not understand Kiswahili and is not fluent in English there was an interpreter to interpret for her from Kiswahili to English language at Kisutu Resident Magistrate's Court. She said she did not understand everything that was said before the Resident Magistrate's Court. She admitted that she understands she was arrested for trafficking narcotic drugs. That it was her first time to visit Tanzania and that the people who arrested her came to court to testify. The accused was shown Exhibit P5, the certificate of seizure and identified her signature and contended that she was forced to sign though she did not object or say that when the certificate was tendered in court. She admitted that she did not know where she would do her study tour nor had reservation for any hotel. That she expected to get help from the taxi driver like how she did in Togo. She also planned to stay in Tanzania for four days.




Having narrated the prosecution and defence evidence, in determination of this case the court will consider the following issues:

1. Whether the accused was arrested on 16/11/2016.
2. Whether she was found in possession of black envelope suspected to be narcotic drug in her bag on 16/11/2016.
3. Whether the black envelope with white powder admitted as Exhibit P3 collectively contained cocaine hydrochloride as charged?
4. Whether chain of custody was not broken from point of arrest, seizure, analysis to tendering in court.
5. Whether the charge against the accused person has been proved by the prosecution beyond reasonable doubt.

6. Whether the defence by accused person raised any doubt to the prosecution case.

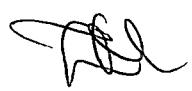
The first issue for determination is whether the accused was arrested on 16/11/2016. This should not detain our time since it is undisputed fact that the accused was arrested on her arrival at the JNIA with Ethiopian Airlines ET 827 from Togo on transit at Addis Ababa supported by testimonies of PW2, PW3, PW4 and PW5. Also during preliminary hearing and in her defence the accused person conceded to the fact that she was arrested on the material date.

Coming to the second issue on whether the accused Ana Moises Chissano was found in possession of black envelope suspected to be narcotic drugs in her bag on 16/11/2016. The prosecution relied on the evidence of PW2 A/Inspector Sosphereth Masatu, PW3 WP Sophia, PW4 D/C Peter and PW5 Asha Ngerema an independent witness from TRA, Exhibit P5, seizure certificate form No. DCEA 003 dated 16/11/2016 used to seize the black envelope suspected to have narcotic drugs; Exhibit P6 which is the black back bag alleged to carry the concealed narcotic drugs and Exhibit P3 collectively the brown envelope which inside there is a black envelope found in a black bag Exhibit P6 with narcotic drugs. Both PW2, PW3 and PW4 are police officers who arrested the accused person at JNIA. They both testified that the accused on arrival at JNIA, she had one hand bag and another black bag which could be carried on the back and had wheels.



They arrested her after being informed that she is suspected of trafficking in narcotic drugs and taken to the ADU office at JNIA. PW2 left the accused person with PW3 and PW4 and went to find independent witnesses to witness the search of the accused person, a woman. Then

PW2 got one Etines Msowera from the Immigration and PW5 from TRA as independent witnesses. The physical search was conducted by PW3 in the presence of PW5 and the other independent witness while PW2 and PW4 were outside and nothing was found. PW3 called PW2 and PW4 in the office after completing physical search. Then PW2 ordered PW3 WP Sophia to search the bags. PW3 searched the hand bag and found boarding pass, passport and ticket, 2 mobile phones and other items but there were no narcotic drugs. Then PW3 opened the black bag and found 2 blankets, she removed them but the bag was still heavy. PW2 ordered the whole team with the accused person to go to the x-ray machine. When the bag was placed in the x-ray machine, it showed there was an envelope within the bag. They returned to the ADU office. PW2 tore lining of the bag in the presence of the independent witnesses, PW3 and PW4, inside he found some sponges and a black envelope. PW3 removed the black envelope. PW2 took a knife, and punched at the end of a corner of the envelope and found a white powdery substance inside. PW3 then filled a seizure certificate seizing the black bag and the black envelope suspected to be narcotic drugs. PW5 Asha the independent witness confirmed what was stated by other witnesses, she witnessed the whole process of search and that the black envelope was found in the black bag alleged to belong to the accused person. When PW5 entered the office the bags were in the office.



The prosecution evidence was confirmed by DW1 the accused, admitted in her testimony that the black envelope was found in the black bag. But she disputed the black bag was not hers. The accused managed to identify Exhibit P5 certificate of seizure but claimed she was forced to sign.

Therefore, from the above prosecution evidence who were the eye witnesses, was cemented by Exhibit P5 certificate of seizure, Exhibit P6 the black bag and Exhibit P3 collectively the brown envelope containing inside the black envelope with narcotic drugs. Having observed the prosecution witnesses who testified on what they saw I find there is nothing which has been advanced to discredit their testimonies in any way. The court has also considered the defence of the accused that she had carried a pink and brown bag. And that she was forced to sign the certificate of seizure, this was never raised during cross examination when tendering Exhibit P5 the certificate of seizure. The court is of the finding that is an afterthought because when the Exhibits P3 collectively and P6 the bag were tendered in court, the accused person did not raise any objection on their admission. Also, the accused was asked during cross examination in her defence case whether she knew the arresting officers and stated that it was her first time to visit Tanzania and had never met the arresting officers before. Hence, I find the prosecution evidence was water tight.

On the issue of whether the black envelope which was found in the accused's bag containing white powder marked Exhibit P3 collectively contained narcotic drugs known as cocaine hydrochloride, it is in evidence that PW3 and PW4 took Exhibit P3 collectively on the same day 16/11/2016 to the office of the Government Chemist Laboratory Authority. This was corroborated by the evidence of PW1 the government chemist who received the envelope which was sealed as exhibit from PW3 and Exhibit P1 sample submission form no. DCEA 001. He opened the sealed brown envelope with yellow cello tape and inside found a black envelope containing a white powdery substance, he measured the weight and got 3.03 kgs. PW1 took a little sample to conduct preliminary test of the

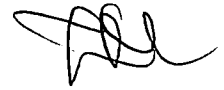


powder substance using cobalt thiocyanate reagent and the powder turned into blue colour, proof that the white powder was cocaine hydrochloride. The preliminary test was conducted in the presence of PW3 WP Sophia and she testified the same. He took another sample of the same powder to conduct the confirmatory test and labelled it 1990/2016. PW1 then packed the exhibit, sealed with red cello tape and handed to PW3 WP Sophia who returned back to the Terminal one Police station and handed over to the Exhibit keeper. On 17/07/2017 PW1 conducted the confirmatory test and the results proved that the powder was cocaine hydrochloride. After the confirmatory test he prepared laboratory analysis report which was approved by Chief Government Chemist and admitted in court as Exhibit P2. Therefore, from the above evidence it is undisputed that the said powder in the black envelope was a narcotic drug known as cocaine hydrochloride as stipulated under section 2 of the Drugs Control and Enforcement Act No. 5 of 2015.



Regarding the issue of chain of custody of exhibits, whether it was maintained especially Exhibit P3 collectively. The landmark case of **Paulo Maduka and Others Vs Republic, Criminal Appeal No. 110 of 2017**, CAT at Dodoma (unreported) provides guidance on the chain of custody. The Court of Appeal held chain of custody as "*chronological documentation and or proper trial, 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 been planted fraudulently to make someone guilty..... The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another*

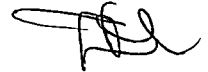
*must be documented and that it be provable that nobody else could have accessed it".*



On handling of Exhibit P3 and other exhibits, according to prosecution evidence of PW1, PW2, PW3, PW4, PW5 and PW6 reveal that PW2, PW3 and PW4 testimonies were to the effect that they both arrested the accused at JNIA suspected of trafficking in narcotic drugs. The accused person was carrying two bags, one hand bag and the other was a black bag, which could be pulled by wheels or carried on the back. They took the accused person to the office of the ADU with the 2 bags and left them in the office. PW2 went out of the office to find independent witnesses one of them being PW5 one Asha Ahmada Ngemera to witness the search of the accused. The physical search was conducted on the accused and later the search on the bags. It was PW3 who opened the black bag and she found two blankets, she removed them but the black bag was still heavy. PW2 ordered the whole team to take the black bag to the scanning x -ray machine. At the machine, it revealed that there was an envelope in the black bag. They returned back to the office and PW2 took a knife and tore lining of the bag in the presence of PW3, PW4, PW5, the other independent witness Immigration officer and the accused were all present. Inside the lining of the black bag, they found a black envelope took it out and wanted to see what was inside. They found a powdery substance which they suspected to be narcotic drugs. PW3 filled a certificate of seizure, which was signed by the two independent witnesses one of them is PW5, PW2, PW4 and the accused person signed and placed a thumb print. In order to avoid tampering with the black envelope, PW2 bought a brown envelope at JNIA and placed the black envelope into the brown envelope and sealed it with a yellow cello tape in the presence of the two independent witnesses one of them is PW5, PW3 WP Sophia, PW4




D/C Peter and the accused. The brown envelope was sealed with a normal cello tape and then placed a yellow cello tape. After sealing the brown envelope, PW4 recorded the names of the two independent witnesses, the accused, PW2, PW3 on top the brown envelope and each of them signed. PW3 and PW4 remained in the office with the exhibits, seizure certificate and the accused person till morning hours at 5.00am. They were picked by a motor vehicle at JNIA and took them to the Terminal One Police Station. PW3 reported to OC CID Inspector Dickson Haule and instructed PW3 to hand over the passport, boarding pass and ticket to PW6 D/CPL Jesias who is the exhibit keeper. And OC CID instructed PW3 to take the brown envelope suspected to be narcotic drugs to the Government Chemist for further analysis.



Together with the submission form, in which PW3 filled the IR number IR/JNIA/IR/190/2016, the name of the accused, the names of PW3 and PW4, they went on the same day to the office of Government Chemist Laboratory Authority to establish the weight and conduct test if the white powdery substance is narcotic drugs and its side effect. At the reception they were given laboratory number 1990/2016 and they were taken to the laboratory. At the laboratory they were received by PW1 Elias Mulima, PW3 handed over the brown envelope together with the letter and submission form to PW1 for the request to weigh and conducted test to establish whether the powdery substance was narcotic drugs. PW1 unsealed the brown envelope in the presence of PW3. He weighed it and took a small sample for a preliminary test and results revealed that it was cocaine hydrochloride. PW1 then took another small sample for confirmatory test and labelled it Laboratory no. 1990/2016. He then repacked the narcotic drug and sealed it with a special seal a red cello tape and signed on it. He handed it over to PW3 WP Sophia. PW3 and

PW4 returned back to Terminal One Police Station and PW3 handed over the brown envelope to PW6 D/CPL Jesias the custodian and Exhibit Keeper who kept it in safe custody. PW3 filled the hand over certificate which was prepared by PW6 and they both signed it. The hand over certificate was tendered and admitted in court as Exhibit P7 and identified by PW3 which shows that it was a handover of a brown envelope containing 3.0354 kgs of cocaine hydrochloride. It was signed by both PW3 and PW6 and dated 16/11/2016. Thus, the Exhibit P3 collectively was kept in the safe custody under the control of PW6 until when it was tendered in court in this case. Subsequently, the above prosecution evidence from arrest, seizure, control, transfer, analysis up to tendering of the exhibit in Court shows that the chain of custody was not broken. This can be proven by the oral evidence of the prosecution witnesses and the documentary evidences, from the time of arrest, seizure, to the scientific testing by the Government Analyst, keeping in custody and tendering in court. In the case of **Charo Saidi Kilimus and Mbwana Rua Kubo vs Republic, Criminal Appeal No. 111 of 2015**, it was held that the chain of custody may be proven by oral evidence. Therefore, from the evidence of PW1, PW2, PW3, PW4, PW5 and PW6 proved that the chain of custody was not broken and when the Exhibit P3 collectively was tendered in court, it was still sealed.



Another issue is whether the charge against accused person has been proved by the prosecution beyond reasonable doubt. The prosecution evidence adduced before the court, from the intelligence information received, arrest of accused person, search of accused person's bags in the presence of independent witnesses, the search through the scanning x-ray machine to the moment the black envelope was found and extracted from the lining of the black bag of the accused person in the presence of

the independent witnesses, the process of handling and handing over of the exhibits, the scientific analysis conducted and its report which revealed the Exhibit P3 collectively contained cocaine hydrochloride and the safe keeping of said exhibit. Also, the length of time when the Exhibit P3 was taken for analysis, the certificate of seizure and the consistency, credibility and reliability of the evidence. The Court of Appeal in Tanzania held in the case of **Goodluck Kyando Vs Republic (2006) TLR 363**, that "*it is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness.*" The prosecution witnesses are the eyes and ears in justice delivery, therefore they should be trusted unless there are reasons not to do so. There are no good reasons advanced before the Court not to believe the prosecution witnesses. The prosecution called 6 witnesses PW1, PW2, PW3, PW4, PW5 and PW6 to prove its case, their testimonies were not challenged and have strongly persuaded this court the prosecution evidence proved its case to the required standard; beyond a reasonable doubt.



The accused stands charged with the offence of trafficking in narcotic drugs contrary to section 15(1)(b) of the Drugs Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the First Schedule to of the EOCCA, Cap 200 R.E 2002 as amended by Act. No. 3 of 2016. Section 15(1)(b) provides that;

*"15(1) Any person who;*

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

For the accused person to be found guilty, the *actus reus* and *mens rea* of the offence must be proved beyond a reasonable doubt. According to

section 2 of the Act No. 5 of 2015, trafficking means; "*the importation, exportation, manufacture, buying, selling, administering, **conveying**, delivery or distribution of any substance represented or held out by that person to be narcotic drug or psychotropic substance or making of any offer .....*" [Emphasis is mine]



The prosecution proved that the accused was travelling from Togo to Dar es Salaam by Ethiopian Airlines. The accused was found carrying narcotic drug in one of her bags. PW1 proved that the substance found in accused person's bag is narcotic drug commonly known as *cocaine hydrochloride* therefore *actus reus* is well established by the prosecution. Coming to *mens rea*, the packing of the narcotic drugs in the lining of the accused person's bag and the technique used to conceal the black envelope proved the element of *mens rea*. The accused person had the intent of trafficking the cocaine hydrochloride in our country. The accused person was carrying the black bag when placed under arrest after clearing Immigration area and PW2, PW3, PW4 and PW5 had no grudge or malice to frame the accused person as she correctly testified under oath that it was her first time to visit Tanzania, she had not met them before in her life and had no grudge or complaint against them. The prosecution was able to prove the accused person had no details nor contact of any person or hotel she would be visiting during her alleged study tour. The accused person raised in her defence that the purpose of her trip to Tanzania was for a study tour in hotel management without knowing which hotel or which office she would go for the study tour or seek for assistance to conduct the same.

Lastly, whether the defence raised by the accused person raised any doubt to the adduced prosecution case. The accused denied the black

bag where the black envelope suspected to contain narcotic drugs was found, being her bag. It was her contention that she carried a brown and pink bag with her when she was arrested at JNIA, though she admitted they found the black envelope suspected to contain narcotic drugs in the black bag but it was not hers it was planted.

However, when the black bag was tendered before the court the accused person did not raise any objection against the tendering and admittance into evidence. Hence, I find the denial during her defence case is purely an afterthought since she could have raised objection at the earliest point. Furthermore, she did not provide any evidence to substantiate the same.

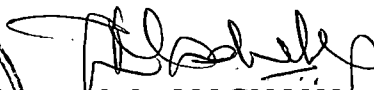


Also, the accused person raised that when the committal proceedings were conducted the statements were not read in her language of Portuguese as she was not fluent in English hence, she could not understand and that she did not raise it at the Resident Magistrate's Court of Dar es Salaam. I have perused the record of the typed committal proceedings from page 8 which speak for itself when State Attorney addressed the court that the court brief was in Swahili language and the accused person only knows English; therefore, they brought an interpreter one Mr. Juma Kasinda who took oath to interpret from Swahili language to English language for the benefit of the accused person. The court read over the information and explained to the accused person in the language she understood English. The court addressed the accused person as follows *'you have now heard the substance of the evidence that the prosecution intends to call at your trial. You may either reserve your defence, which you at liberty to, or anything which you may wish to say relevant to the information against you. Anything you say will be taken*

*down and maybe used in evidence at your trial.'* In reply, the accused person stated *'I reserve my defence till trial in the High Court. I do not have any witness to call at my defence'*. This depicts clearly that accused person understood what transpired in court during the committal proceedings. I took time to go through the proceedings of this court and I take note that on the 18/06/2018 during plea taking and preliminary hearing the Court asked the accused person if she is conversant with English Language and replied "I am conversant with English Language". On entering plea, the accused person stated that "the bag was mine the substances I am accused for were not mine". Hence a plea of not guilty was entered. I consequently find it an afterthought and her defence has not in any way discredit the prosecution evidence.


In the upshot, the Court finds the prosecution has proved their case beyond reasonable doubt. I therefore find the accused person ANA MOISES CHISSANO guilty of trafficking in narcotic drugs namely cocaine hydrochloride as charged and convict her forthwith.



  
**L.L. MASHAKA**  
**JUDGE**  
**11/12/2018**

## **SENTENCE**

The accused person was found guilty and convicted with the offence of trafficking in narcotic drugs known as cocaine hydrochloride weighing 3.03kgms, was found with the said cocaine hydrochloride on the 16/11/2016 at the JNIA, DSM upon arrival from Addis Ababa, Ethiopia. In mitigation submitted by Learned Counsel Ruhwanya Hassan on her behalf, the accused is a first offender as submitted by State Attorney for the

Republic and there is no previous criminal record. The accused has a family which is dependent on her, she is a single parent and has two children who are teenagers. The accused is sick has eye problems and she earlier informed the Court, has no relative here in Tanzania and has been in remand for three (3) years. Counsel prayed to the Hon. Court to consider and impose a lenient sentence on the accused person, because she has learned her lesson during the period in remand and she is remorseful of what she did. Mr. Constantine Kakula, State Attorney submitted to the Hon. Court that the accused person is a first offender and this offence is occurring frequently in Tanzania and have contributed to the loss of men and women, the working force of our nation through trafficking and use of narcotic drugs. He prayed to the Hon. Court to severely punish the accused person for the offence she committed and it be a deterrent to others who intend to indulge in such offence. 


Narcotic drugs are a menace to our society and has to be prevented with all efforts expended by each one in the society. Concerted efforts have to be implemented to minimize these devastating effects of narcotic drugs by punishing those found guilty trafficking in narcotic drugs. Section 15(1) (b) of the Drugs Control and Enforcement Act, No. 5 of 2015 provides that

*"Any person who traffics in narcotic drug or psychotropic substance commits an offence and upon conviction shall be liable to life imprisonment".*

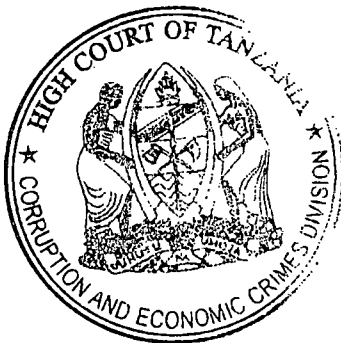
I have considered the mitigating factors by the accused person; however, this Court is guided by the above-mentioned provision which, provides life imprisonment is the minimum sentence to be imposed. I


therefore sentence the accused person ANA MOISES CHISSANO to life imprisonment.



  
**L. L. Mashaka**  
**Judge**  
**12/12/2018**

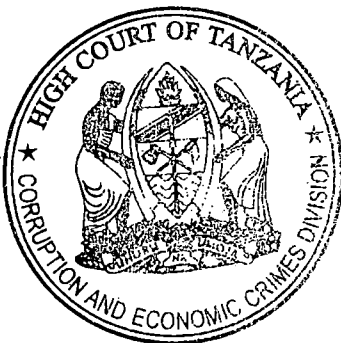
Right of appeal fully explained to the accused.




  
**L. L. Mashaka**  
**Judge**  
**12/12/2018**

**ORDER:**

The narcotic drug cocaine hydrochloride Exhibit P3 collectively be destroyed in an appropriate manner.



  
**L. L. Mashaka**  
**Judge**  
**12/12/2018**