

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT BABATI.

CRIMINAL SESSION NO. 63 OF 2016

*(Originating from in the Resident Magistrate's Court of Manyara at Babati PI. No.
14/2014)*

THE REPUBLIC

VERSUS

- 1. MERY D/O LUCAS URIO**
- 2. EMMANUEL S/O MMAR**

JUDGMENT

DR.OPIYO, J.

Accused persons MERY LUCAS URIO and EMMANUEL S/O MMARI, stands charged with the offence of Trafficking in Narcotic Drugs contrary to Section 16 (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95 [R.E 2002]. It is alleged that, on 21st day of May, 2014 at Magara Village, within Babati District in Manyara Region, accused persons were found trafficking narcotic drugs namely *Catha edulis* commonly known as " Mirungi" weighing 140 kilogram valued Tanzania shillings seven million (7,000,000/=) In a motor vehicle with registration T 331 ARE make Toyota Corola.

Prosecution summoned a total of eight witnesses and seven exhibits to prove their case. Starting with the evidence of PW1 E 7152 D/C Masanja, his testimony was that, on 20/05/2014 at 23 hours he was at the road block at Magugu. He was with inspector Thomas, Sgt Bakari, D/CPL Everest, PC Dorcas and D/Cons Sebastian. One Motor vehicle, saloon appeared from Arusha side and when it reached near the road block it turned suddenly and started going back. They started to follow it as they got suspicion. When it reached Mbuyuni, it diverted from the main Road to a rough road heading to Mbulu via Magala. They continued to follow it. They called civilians at the villages of Maole, Magala and Maweni to put barriers at the road. When they reached Magala they had already kept some blocks but it passed at one of the sides they also did the same and continued to follow them. After they passed their car was stuck at the ditch at the side of the road. The persons therein opened the doors and started running. PW1 said he shot on the air once, two of them slept down and they managed to arrest them. Two of them managed to escape. They apprehended one man and one woman, who were Mary Urrio and Emanuel Mmari as they introduced themselves. When they checked the car they found 2 bags at the back seats and 3 bags at the boot all packed with Mirungi. He also managed to read its Reg. No. T331 ARE Toyota Corolamake, Light Green in colour. They took accused persons to Police station, Magugu and arraigned them in court for drug trafficking. He tendered the motor vehicle make Toyota Corolla with Reg. No. T 331 ARE, Light Green in colour as exhibit and it was admitted as exhibit.P1

Another witness was PW 2: Zebedayo Paulo, his testimony was to the effect that on 20/05/2014 at about 22:30 hours he was called by OCS Magugu, Thomas and told him to find some people so that they can put barrier along the road as there was a motor vehicle they were chasing. He woke up and awaked some people and they went to put the barrier. At about 12:30 hours mid night they saw two cars coming. They passed at the side of those logs they kept and decided to follow them just few meters the car they were chasing got stuck at the water Ditch. They heard a gunshot as the other car reached there. They saw two people running while 2 were lying down. The two who were lying down were apprehended and got their hands tied up with a rope. One was a woman and another was a man. The Police officers searched the motor vehicle and they got five bags of Mirungi, 2 at the back sit and 3 at the boot. They opened them and found Mirungi. He further said that, the car with Mirungi was corolla make -light green in colour with Reg. No. T 331 ARE.

PW3 was Gervas Benedict Swaya, whose evidence was similar to that of PW2, his testimony was to the effect that, on 02/05/2016 at 00:15 hours midnight, he was called by PW2 that they should keep barrier to obstruct one motor vehicle. They put the barrier and after some few minutes there appeared two cars racing. When one reached at the barrier it diverted the logs and got through followed by the 2nd one which was following it closely. After about 100 meters the first car got stuck at the ditch near river. They searched the car and they found 2 bags at the back sit and 3 at the boot. They were parked with Mirungi totalling to 70 pieces. They were taken to

their car and they left for Magugu Police Station. He was able to identify the said vehicle. Exhibit P1.

It was his further testimony that, the ones who were in front seats got out and started running. Then the other two at the back seat got out, the police officers made a gunshot and they decided to surrender by lying down. The first two fled but the other two were apprehended. He said, he was able to see them through the aid of the light from the two motor vehicles and civilians had enough torches. They tried to chase the two who ran away, but in vain. He identified accused persons at the dock.

PW4: Kennedy James Kaseke retired Commissioner of the Commission dealing with drugs, testified to be the one who did the valuation of the seized drugs and found that the same was valued at 7,000,000/=. He tendered the certificate of value dated 06/10/2015, the same was admitted as exhibit P2.

PW 5: F 8295 D/Cons, Sebastian, his testimony was that, on 21/05/2014 he was at Police Station Magugu, at around 9.00 he was assigned a file in relation to this case with Ref. No. MGG/IR/700/2014 concerning drug trafficking with two accused persons. Mary Lucas Urrio and Emanuel Mmari. After receiving the same, he took the suspects with the drugs and travelled to Babati in order to meet RPC. At that time the officer of the Government Chemistry had sent someone to collect sample, so he handed over to him the drugs for sample collection and weighing. He prepared the inventory

form for the drugs destruction. The court ordered the lot to be destroyed as it was perishable.

It was his further testimony that he also interrogated Merry Lucas about and she admitted the drugs were hers which she was trafficking to Singida. He also interrogated the 2nd accused who also admitted and claimed drugs were Merry's who hired him to take her to Singida. He said he was a driver of the motor vehicle No. T331 ARE. That Afande Thomas handed over to him the drugs through chain of custody records which he properly filed in accordance to procedure available. He tendered the chain of custody form and the same was admitted as exhibit P3.

PW6:-E. 3008 d/CGT Dongoye, he testified that, on 20/8/2014 he was in the OC, CID'S office proceeding with his work at Babati Police Station he was given the file by OC-CID, It was concerning trafficking Narcotic drugs, Mirungi. It concerned two persons, Mary Lucas and Emmanuel Mmari. The accused persons were already in remand prison. He came to note that the motor vehicle they were using is motor vehicle T.331 ARE which was by then at Babati Police Station. The owner was not known to ascertain how it got on the hand of the accused persons. They wrote a letter to TRA to identity the owner of the Motor vehicle in question. The result was that the owner was Kulthum Yusuph of Keko Dar es salaam, TRA gave them a copy of registration card and covering letter to that effect. He did pray to tender the same as exhibits. The same were admitted collectively as Exhibit PE4. It was his further testimony that, the one who led the arresting team was the Late Insp. Thomas, there was inventory that was

prepared by him for destruction of the drugs as he was the head of the team. He prayed to tender the statement of Inspector Thomas dated 21st May, 2014 as exhibit and the same was received as exhibit PE 5. He told this court that, it was Inspector Thomas who prepared the inventory form for destruction of the drugs. The order was taken to the Magistrate who authorised destruction of the drugs Mirungi 140 kg. He found the inventory form in the file then he kept it as part of the exhibit, being an investigator. Inventory form was admitted as exhibit PE6.

Another prosecution witnesses was PW7: Erasto Laurence, a Government Chemist. His testimony was that, on 21/5/2014, he was called at Babati police station for sample collection and weighing seized narcotic drugs. He articulately explained how the sample taking process went. That, on 6/6/2014, he travelled to their lake zone lab office for sample analysis, at Mwanza. He handed the samples to the office labelled as 143/2014. That was the end of his involvement with those plants samples.

Kagera Ngiweshemia Government Chemist was the last prosecution witness. His evidence was to the effect that, on 6/6/2014 He was in their zone office in Mwanza he was handed over samples from their Northern zone office, in Arusha with covering letter PF 180 from case file No RCO Babati. MG/IR/ 700/2014. He then conducted analysis to the samples which came out that had chemicals called Cathinone and Cathin indicating they were narcotic drug as per the report he tendered in court and was admitted as admitted as PE 7.

The prosecution also had a statement of the late Inspector Thomas Muniko is that admitted as exhibit PE 5. The gist of this evidence is that the late inspector was with D/C Masanja on 21/5/2014 at the arresting scene assisted by civilian at Magara after they chased the motor vehicle which turned back to where it was coming from suddenly when it reached police barrier at Magugu. That, they said motor vehicle was Toyota Corrola make, black in colour. They were able to seize 140 kg of Mirungi, but no certificate of seizure because the incident happened at the operation and in emergency. That marked the end of prosecution testimony.

Upon conclusion of prosecution evidence, the court ruled out that both accused persons had a case to answer and they were given to bring their defence case. The First Accused person Merry Lucas Urio testified as DW1, her testimony was that, between 2010 to May, 2014 she was working at Himo at a Esther Mmari's shop. On 20/5/2014 she was informed of the death of her Sister, Anna Lucas Urio who died on 19/5/2014, she was residing at Ishponga village, in Katesh, Hanang District. DW1 said she informed her boss, who told her to wait until when she comes from work. As the burial was on 21/5/2018, her boss gave her fare and one person to escort her to the burial ceremony. That was Emanuel Mmari. DW1 told this court that, they left home for the purpose of going to Arusha at around 3.30 p.m. to enable them get transport to Katesh. They arrived at Arusha at around 5.30 p.m. and went to the bus stand, and they were Lucky they got the Motor Vehicle Saloon as there was not buses by then. They agreed to board it at a fare of 20,000/= each. They started journey at around 20:00hrs hours on 20th/5/2018, she further told this

court that, when they got in the car they found two men and one Woman. So they were 2women and 3 men.

DW1 further testified that, the journey started and when they reached Magugu the motor vehicle turned to where they were coming from, the driver started speeding towards Arusha, and the two men were talking in a Language they could not understand, when they inquired they told them to not worry as he was taking them to Katesh as they wanted, DW1 said when they drove for some time they diverted to a rough road and in a short while they stopped the Motor Vehicle and fled away, and within no time police officers arrived and found them in that motor vehicle. They asked as to why they were running, they were apprehended and took them in a different Motor vehicle and taken to Magugu. In the Morning, they were told they were accused of car theft and subsequently taken to Babati Police Station and arraigned in court on 26/5/2018 charged with trafficking Narcotic drugs instead of with car theft as originally informed. she further testified that, her safari was for the burial of her Sister, she was not in control of the motor vehicle at all, it was the driver and the other guy who could have known about the lot, if at all.

DW2:Emanuel Mmari testified that on 20th at around 10.00 Am, his Mother,, Esther Mmari called him and informed him that Merry had lost her sister. She asked if he will get a chance to escort her to the burial of her Sister. He agreed. He went to Himo Police Station where her mother works, she then gave them money and they started the journey to Katesh for burial. They started the journey at around 3 p.m. when they arrived at

Arusha they had to wait for a while before getting a transport to Katesh as buses to Singida had already left. After a while they were able to get a Saloon car. In that car they found 3 people 2 male and one female. They started journey at around 19 to 20 p.m. It was already dark. At Minjingu the woman dropped. When they reached Magugu the driver suddenly turned the Vehicle toward where they were coming from. When they inquired he just told them no problem he will take them to Katesh. He was speeding back and talking to the other man in a language they did not understand. He turned to a rough road when they inquired he said it is a short cut to Katesh. But he was on high speed and could not listen to them to reduce speed. After short while they stopped and the two who were seated in the front opened the door and fled away. suddenly Police appeared accusing them of car theft. They were beaten and police took them to their motor vehicle. He went to Magugu Police Station. They were taken to lock up. In the Morning they taken to Babati Police Station and arraigned in court on 26th/5/2014 for narcotic drug trafficking. DW2 said, he was just escorting DW1 for her Sister's Burial.

The third defence witness was **DW3: W.P. 2204 SGT Esther Goodluck Mmari** Police Officer of Himo. She testified that Merry used to work at her shop in Himo from 2011 to 2014. That on 20/5/2018 Merry called her that she had lost a Sister at Katesh. She told her to wait and when she got home she found her still grieving for her Sister. She called her Son Emmanuel to escort her to Katesh as she was to travel alone. Emmanuel then came home. She gave then 200,000 Tshs. and they left for Katesh between 3 pm. To 4 p.m. After that, she came to hear that they were

apprehended and were being held at Babati Police Station of Narcotic drug trafficking.

After closer of evidence of both sides, the court summed up the whole evidence to assessors and had a chance to take their opinions. All the three assessors, Mwaftari Omary, Amina Beay and Maulid Rajab Mngido opined that the accused persons were not guilt.

Now having gone through the evidence of the prosecution side, as well as the defence case by the accused persons, I have also considered the assessors opinion. The crucial issue is whether the prosecution did manage to establish the case against the accused persons? In the case at hand the accused persons are charged with trafficking narcotic drugs, The direct evidence connecting the accused persons with the alleged offence was that of PW1, PW2, and PW3, the testimony of PW1, E.D/C Masanja was that, on 20/05/2014 he was at the road block Magugu inspecting different cars, one motor vehicle came and upon reaching them it turned and started going back, PW1 and Inspector Thomas started following it, when they reached Magala area the car they were chasing stuck at the ditch and the persons who were in opened the door and started to run away. They found the two who remained there and apprehended them, and he said they are the accused persons in this case, he said when they checked the car they found two bags at the back seats and three bags on the boot all packed with " Mirungi." This evidence was supported by that of PW2 and PW3 whose evidence were that, they received a call from OCS Babati to put barriers on the road as police were chasing one motor vehicle, they obeyed

the order and put the logs on the road and they saw the car which was chased by police, it got stuck at the water ditch and the two people from the said car opened the door and ran away. Police apprehended the remaining two. Such evidence as also supported by the evidence in exhibit PE 5, the evidence of the late Inspector Thomas who also was at the crime scene as he was involved in chasing race with D/Coplo masanga and managed to apprehend the two accused persons.

Apart from the direct evidence from PW1, PW2 and PW3 there was also evidence from PW4, PW7 and PW8, the evidence of these witnesses was to the effect that the drugs that was seized in the car the accused were found in was indeed "Mirungi" which was valued at Tanzania Shillings seven Million (Tshs 7,000,000/=).

From the testimonies of PW1, PW2, PW3 I have no doubt that what was seized in the motor vehicle with registration No. T331 ARE and later examined by PW8, an officer from the Government Chemist and as per the exhibit PE6 in court were Narcotic drugs. The vital question that follows is who was the owner of the bags containing the said drugs?

The evidence of PW1, PW2, PW3 and exhibit PE5 was clear that, in the vehicle in which the accused persons were found, two people who fled therefrom are still at large to date. PW3 proved that those who fled are the ones who were in front seats. On the other side the accused persons in their defence had strenuously denied ownerships of the bags, they stated clearly that they were just passengers who boarded the said motor vehicle

to Katesh for burial ceremony, and that is why when the two persons ran away and they remained in the car as they did not know what was really going on. In deed the evidence adduced by PW1,PW2 and PW3 is direct and credible, that Mirungi was found in the car the accused persons were found in, but there is no evidence proving beyond reasonable doubt that, it is the accused persons who were in ownership of the bags containing the said Mirungi. The mere facts that the accused persons were found in the motor vehicle where the drugs were found in was not a sufficient proof of possession or ownerships, management or control of the motor vehicle concerned. Section 16(2)(c) of cap. 95 RE 2002.

PW5 D/Const.Sebastian's testimony that the second accused admitted to him that he was the driver who was hired by the first accused is far from being trustworthy, as it is in big contrast with that of PW3 who said those ones who were in front seats are the ones who fled, meaning that it is the one who was driving and the one in the front passenger seat. This is a material contradiction/discrepancies in prosecution evidence that could not be ignored in terms of holdings in **the cases of Michael Haishi v. R (1992) TLR 92** and **Mohamed Saidi Matula V R (1995) TLR 3.**

The position of law in criminal proceedings is well settled that, it is the duty on of the prosecution to establish the charged offence beyond reasonable doubt. The Court of Appeal in the case of **Mohamed Said Matula Vs Republic**[1993] did state that,

"Upon a charge of murder being preferred, the onus is always on the prosecution to prove not only the death but also the link between the said death and the accused; the onus never shifts away from the prosecution and no duty is cast on the appellant to establish his innocence"

Even though in the above cited case the charge against the accused was that of murder, the position does not change in other criminal charges. See: **Joseph John Makune Vs Republic** [1986] TLR 49 the Court held that:

"The Cardinal principle of our criminal law is that the burden is On the prosecution to prove its case; no duty is cast on the accused to prove his innocence"

In the case at hand, it was the duty of the prosecution to adduce cogent evidence to prove that there was connection between the bags with drugs seized in the vehicle and the accused persons. Since there was no evidence to connect that, in such circumstances I have no choice but to believe the accused persons defence that they were just the passengers heading to Katesh. What has been proved is seizing the narcotic drugs in the motor vehicle in question, but not the same being owned by accused persons. As long as there is a possibility that, the ones who fled are the ones who were in control of the motor vehicle at the time of seizure, there is equally a possibility of the two accused person's innocence. Thus, as it is the duty of the prosecution to establish the case against the accused persons beyond

reasonable doubt, since such duty has not been discharged to the standard required the benefit of doubt is resolved to the accused persons favour.

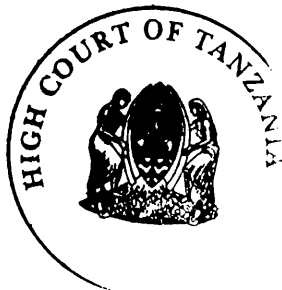
In the circumstances of this case, and for the reasons stated herein above, I find no sufficient evidence to find the accused persons guilty. I totally agree with the wise assessors opinion that the prosecution evidence was doubtful. I proceed to find both accused persons, MERRY D/O LUCAS URIO and EMMANUEL S/O MMARI not guilty as charged and they are hereby acquitted.



A handwritten signature in black ink, appearing to be "DR. M. OPIYO", written over a horizontal line.

DR.M.OPIYO,
JUDGE,
20/08/2018

However, as for the motor vehicle, make Toyota Corola with Registration no T 331 ARE which was admitted in court as exhibit P1 stands unclaimed for long now. It is over five years ever since it was seized. I therefore order that it be forfeited to the government and it should therefore be sold in public auction and the proceeds there from be deposited into the consolidated fund.



A handwritten signature in black ink, appearing to be "DR. M. OPIYO", written over a horizontal line.

DR.M.OPIYO,
JUDGE
20/08/2018