

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT BABATI.

CRIMINAL SESSION NO. 66 OF 2016.

(Originating from PI No. 10/2014 in the Resident Magistrate's Court of Manyara at Babati)

REPUBLIC

VERSUS

- 1 EDWARD S/O MOLLEL**
- 2 MUDDY S/O ROBERT @ JAPHATE S/O ROBERT**
- 3 JANETH D/O ROBERT MOLLEL @ HAPPY D/O MOLLEL**

JUDGMENT

DR. OPIYO, J.

The accused persons named above are jointly charged with the offence of trafficking narcotic drugs contrary to section 16 (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act. Cap. 95 R.E 2002 as amended by section 31 of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2012. It is alleged that, on the 13th day of April, 2014 at Magugu Area, within Babati District in Manyara Region, the accused persons did traffic narcotic drugs namely *Catha edulis* commonly known as "mirungu" weighing 70 kilograms valued at Tanzania shillings three million five hundred thousand (Tshs. 3, 500, 000/=) in a motor vehicle with Registration T339 BYE make Toyota Noah. The charge was read over and

explained to the accused persons who pleaded "*it is not true*". The prosecution called six witnesses and tendered eight (8) exhibits to prove their case while the defendants defended themselves without calling any witness to support their defence.

Before this court, the Republic/prosecution was represented by Kisinga and Mmari learned State Attorneys while the 1st accused was represented by Ngereka, the 2nd accused by Urasa and the 3rd accused by Duhia, Learned counsels.

Prosecution lined up a total of six witnesses in vouch to discharge their duty of proving the charge of trafficking narcotic drugs against the accused beyond to the required standard. The defence on the other had had three witnesses who the accused persons themselves. Evidence of both sides will be considered in the course of analysis.

After hearing the evidence of both sides, and considering the nature of this case, the main issue for determination before this court is whether the accused persons were found trafficking narcotic drugs commonly known as "Mirungi." It is well known that in a criminal trial that the burden of proof always lies on the prosecution and the proof has to be beyond reasonable doubt (see **Nathaniel Alphonse Mapunda and Benjamin Alphonse Mapunda V Republic [2006] TLR 385**). That being the position, then in this case it is very important for the prosecution to establish first whether the accused persons were arrested with *Mirungi*.PW3 in his

evidence testified that on 13/4/2014 while he was at the barrier at *Mbuyu wa Mjerumani*, he stopped the accused's motor vehicle with registration no. T.330 339 BYE, make Toyota Noah for inspection. As he approached the motor vehicle after the window was lowered, he smelt something like *Mirungi* and he asked for permission to inspect it, but accused persons refused. Then, PW3 called the late Insector Thomas who was the in charge of investigation section at Magugu police station who went to the crime scene. After seeing the accused persons' reluctance, he ordered the motor vehicle be drove to Magugu Police Station for inspection at the station. According to exhibit P4 (statement of the late Insector Thomas) at the station they inspected the motor vehicle and found Narcotic drugs contained in a sulphate bag and a small bag therein. All the three accused persons were subsequently arraigned in court, charged with the offence of trafficking narcotic drugs. They then seized the drugs and apprehended the accused persons.

In this case, the starting point in connecting the accused persons with the offence charged is the evidence establishing that the Narcotic drugs were found in the motor vehicle which was under control of the accused persons; and the only evidence to establish that is a Certificate of Seizure showing what was seized in the said motor vehicle. According to the statement of the late insector Thomas and evidence of PW3, one of the arresting officers, the motor vehicle was searched at police station. However though out the entire evidence of the prosecution the police officers who searched the vehicle and recovered the alleged drugs did not

bother to fill a Certificate of seizure proving that Narcotic drugs were really recovered from the motor vehicle that was in control of the accused persons, No T 339 BYE, make Toyota Noah. Again, according to the statement of the late Inspector Thomas (exhibit P4) which was given in addition, he stated that the Certificate of Seizure was not filled in because they did not have the relevant forms at police station at that particular time of seizure of alleged Narcotic drugs from the accused persons. But, this is found to be uncanny statement, because PW3 and exhibit P4, both showed that after the accused persons having refused to be inspected at *Mbuyu wa Mjerumani*, they ordered the motor vehicle be driven to Magugu Police Station where the inspection was conducted. That means, the inspection was not conducted as in an emergency which waives the requirement to fill in the seizure certificate. It was done at the police station. Hence the statement that the Certificate of Seizure was not filled because they did not have those forms is unfounded.

Failure of the prosecution to tender certificate of seizure creates serious doubt against the prosecution case because that was the material evidence which could have connected the accused persons with the offence charged considering the fact that, the accused persons in their defence does not dispute that they were using the motor vehicle in question (exhibit P2) on the material date and that they were stopped by police for inspection at *Mbuyu wa Mjerumani*. The only fact which is disputed by the accused persons is that the narcotic drugs were not found in their car. They dispute being found trafficking narcotic drugs. Thus, Certificate of Seizure was the material evidence to prove that narcotic drugs were indeed found in the

motor vehicle possessed by the accused persons. The materiality of seizure certificate in establishing the relevant chain of custody was underscored in the case of **Daudi s/o Chacha @ Marwa vs. The Republic**, High Court of Tanzania at Mwanza, Criminal Appeal No. 100 of 2014 (unreported) it was stated that;

*"I have also discovered as correctly submitted by the learned state attorney that **the prosecution act of not tendering certificate of seizure left a serious doubt to be apprehended as I do.** This is so for obvious reason that the police officers were merely in patrol duty, it was important for them to have recorded what the seized from the appellant....." (emphasis supplied)*

Besides the above, the prosecution tried to establish chain of custody in handling of Narcotic drugs purported to have been seized from the accused persons; It was the evidence of PW2 that on 14/4/2014 he received exhibits from PW4 which was *Mirungi* in a bag and sulphate bag and on 16/4/2014 it was taken by PW4 for the purposes of taking the same Arusha at Government Chemists and returned on the same day, until on 17 when it was taken by PW4 for inventory recording. PW4 further tendered exhibit P6 establishing chain of custody. However, it was stated in the case of **Paulo Maduka vs R, Criminal Appeal No. 110 of 2007 CAT** (Unreported) that, the idea behind recording the chain of custody, is to establish that the alleged evidence is in fact related to the alleged crime. The court thus stated that;-

*"The chain of custody requires 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." (emphasis supplied)*

But in this case, the chain of custody broke from the start, when the police who inspected the motor vehicle and allegedly seized the drugs failed to fill a Certificate of Seizure proving that the said drugs were indeed recovered from the motor vehicle which was in possession or in control of the accused persons. Hence there is no linkage between the sulphate bag and a small bag alleged to have been seized from the accused person's motor vehicle and the drugs which were sent to Government Chemists and destroyed through inventory form (exhibit P7).Based on that, the entire prosecution was case is bound to collapse.

Based on the reasons stated above, I find that the prosecution case has not been proved beyond reasonable doubt and therefore find the accused persons not guilty of the offence charged and hereby acquitted forthwith. Order accordingly.

**(Sgd): DR. M.OPIYO,
JUDGE
20/8/2018**

I hereby certify this to be a true copy of the original.



HL
**S.M. KULITA
DEPUTY REGISTRAR
ARUSHA
05/9/2018**