IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

AT DAR ES SALAAM

ECONOMIC CASE NO. 01 OF 2018

REPUBLIC

VERSUS

WALLESTEIN ALVAREZ SANTILLAN

JUDGMENT

Date of last order: 15/02/2019

Date of Judgment: 19/2/2019

Korosso, J.

Wallestein Alvarez Santillan stands charged with Trafficking in Narcotic Drugs contrary to section 15(1)(b) of the Drug Control and Enforcement Act, No. 5 of 2015 as amended read together with Paragraph 23 of the First Schedule to and section 57(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 as amended.

We premise by bringing forth the background to this case, albeit briefly, as derived from the evidence presented in Court. On the 16th November 2017, the accused person was arrested at Julius Nyerere International Airport (JNIA) Dar es Salaam upon arrival from Brazil via Dubai, Emirates Airline Flight No. EK 725 being the carrier. Upon searching him, it is alleged, the accused was found carrying thirty one (31) packets suspected to contain narcotic drugs, namely cocaine

hydrochloride. From the evidence from the prosecution, the arrest occurred after investigators, received information from an informer that on 16/11/2017, a suspect trafficking narcotic drugs will arrive from Brazil via Dubai, using Emirates Airline EK 0725.

That when the respective flight arrived at JNIA around 15.00hrs, investigators and other alerted officers waited and upon sighting the suspect (the accused person), managed to stop and questioned him and in effect put him under restraint. The accused person was then taken to the Anti-Drug Unit offices within JNIA. That during the arrest and questioning, the arresting officers gathered that the accused person did not understand Swahili or English, but Spanish, which led the officers to seek someone to interpret, and that's when they got PW8- Chama Pembe Kigumi. Thereafter the accused person was searched, a search which included the accused person bags three bags, a knapsack, a purple bag and pink bag. The said search led to retrieval of 31 packets found inside the two bags in the pipes that carry wheel. That on further scrutiny of the packets and the officers saw something like flour in the packets, which they suspected to be narcotic drugs. That the search was witnessed by various people including officers from other Government departments at JNIA and the interpreter. Thereafter the accused person was put into custody. The 31 packets were packed on the 17/11/2017 and sent to the Government Chemist Authority for Analysis on the 20/11/2017, where the contents of the packets were analysed and found to contain cocaine hydrochloride.

On the part of the defence, the accused person when called upon to plead, denied all the charges against him. The gist of the defence case was complete denial of the charges against the accused person. The accused person acknowledges that his name is Wallestein Alvarez Santillan and he is a citizen of Peru and resides in Lima in Peru. He testified on oath, that he left Brazil to come to Tanzania as a tourist, on the 15th of November 2017 and arrived in Tanzania on the 16/11/2017 at around 14.45hrs. His flight from Brazil transited in Dubai and he had three bags, black in colour. That he is an electricity technician and also conversant with the computer system. The accused person (DW1), stated that upon arrival at JNIA airport he embarked and he was carrying his hand luggage. That he went through the immigration desk, where he handed over his passport and boarding pass to the concerned officer. Then his hand was scanned and he was soon after handed back his passport and went to the Visa desk and duly paid. He finalized immigration process and moved to the luggage area and he picked up his luggage the two bags. That he moved with all of his bags and passed through a scanner and was moving to the get out gate when two people he did not know arrive and one took his hand.

The defence argued further that although officers/people were speaking to him but he could not understand what they were talking about in view of a language barrier, and then they took him to a room and he kept asking them what was wrong but he could not understand they language they were speaking being conversant only with Spanish. That, the officers who had taken him were speaking

but he did not understand them. Then he was taken to an inner room and the officers proceeded to search his pockets and took every item he had there and told him to remove his clothes and he was left with a boxer only, and he was in a squat position by then. He was then told to stand up and then they ordered him to dress up.

It was thus the defence contention, that the articles found in his pockets and the hand luggage they took. The accused person further stated that the other two bags he had left in the other office were they had put him earlier. That they went back to the first room and he found his bags had been opened and his clothes and articles therein scattered, a status which confused him. The accused stated that there was no translator or interpreter brought to assist during the time he was at the airport, including during the search.

The accused person in his testimony denied any knowledge of the two bags brought in Court (Exh. P2(a) and Exh. P2(b)). That the said bags seem to belong to a woman and they are not his bags, since his bags were black in colour, they were three and were labeled with ADIDAS logo with a different material (hard canvas) then the bags admitted in Court. The three bags size were medium and one was small, a knapsack. With regard to the luggage tags in the said two bags he denied any knowledge of this saying he was unclear why they were in the said bags. That he has yet to see his bags since his arrest. His bags he contended had clothes, shoes, perfume toiletries, towers and underwear. The small bag contained a laptop and 3 phones and money, US dollars 15000.0 and Riyas, passport, yellow fever car, 2

credit cards. Denied any knowledge of trafficking any narcotic drugs and that when he was searched, no narcotic drugs were found.

To prove their case, the Prosecution side called ten (10) witnesses and tendered 20 exhibits which were admitted as evidence on the part. On the part of the defence, they produced one witness, the accused person himself and there were no exhibit tendered.

Mr. Tumaini Kweka, Learned Principal State Attorney assisted by Ms. Veronica Matikila and Ms. Emma Msoffe learned Senior State Attorneys and Ms. Kija Luzingo Learned State Attorney, appeared on behalf of the Republic and Ms. Abbriaty Sada Kivea, learned Advocate assisted by Anna Stella Celestine and Mr. Thobias Kavishe, learned Advocates.

Having presented the cases for the prosecution and defence we find it pertinent to present what the Court finds facts which are not disputed, as discerned from the memorandum of facts not disputed, taken from the Preliminary Hearing and also an assessment of the evidence before the Court. First, the name and nationality of the accused person is not in dispute. Second, the fact that the accused person arrived at JNIA from Brazil by way of Flight EK Emirates Airline on the 16/11/2017 between 14.45 to 15.00hrs. That the ticket used by the accused person is Exh. P11(a) and that Exh. P6, is the accused person's passport which he used to enter Tanzania. There is no dispute that the language spoken by the accuse person is Spanish and he has no knowledge of Swahili or English languages. There is also the fact that the accused person was arrested at JNIA

upon arrival and one of the arresting officer was PW5. That on the 17/11/2017 around noon the accused person was at Anti-Drug Unit offices, Kurasini.

The Court will consider the following issues in determination of this case.

1. Whether the accused person was arrested at JNIA on the 16/11/2017 arriving from Brazil and found carrying 31 packets suspected to contain narcotic drugs in his two bags.
2. If the answer to the first question is in in the affirmative, whether the 31 packets found in the accused person's luggage contained narcotic drugs that is cocaine hydrochloride.
3. Whether the accused person was found trafficking cocaine hydrochloride into the United Republic of Tanzania as charged.
4. Whether the chain of custody kept unbroken from the point of seizure at JNIA, storage, analysis up to being tendered in Court and admitted as Exh. P1(a) and Exh. P1(b)
5. Whether the defence raised by the accused person raised any doubts to the presented prosecution case.
6. Whether the charges against the accused person have been proved by the prosecution beyond reasonable doubt.

It should be borne in mind that while considering and determining the highlighted issues above, the Court will at all times recognize the fact that the prosecution has the burden of proof. The Court has considered all the cited cases from the defence and the prosecution related to the burden of proof in criminal charges and the role of the Court. It is also important to remind ourselves that, the standard of

proof in a criminal trial does not entail proof to absolute certainty. The standard that must be met by the prosecution's evidence is that no other logical explanation can be derived from the facts except that the accused committed the crime, thereby rebutting such accused person's presumption of innocence. If a trial court has no doubt as to the accused's guilt, or if his/ her only doubts are *unreasonable* doubts, then the prosecution has discharged its burden of proof. It does not mean that no doubt exists as to the accused's guilt; it only means that no *reasonable* doubt is possible from the evidence presented. But the prosecution has to provide the evidence to show the accused committed the offence charged.

The first issue for determination is whether the accused person was arrested at JNIA on the 16/11/2017, arriving from Brazil and found carrying 31 packets suspected to contain narcotic drugs in two bags. The first segment of this issue need not take much time, since, the evidence on record reveals that there is no dispute between the prosecution and defence that the accused person arrived via Emirates Airline, Flight EK 725 on the 16/11/2017 around 15.00hrs-16.00hrs at JNIA. That his itinerary was from Brazil via Dubai to Dar es Salaam JNIA. That he was arrested at JNIA. The evidence of PW5, who was the arresting officer, the accused himself, the E- ticket with the name of the accused person, Exhibit P11 (a), a passport with the name of the accused person- Exhibit P6, the boarding passes, all give evidence to this fact. Therefore, from the evidence on record, the accused person was arrested at JNIA on the 16th of November 2017, upon arrival from Brazil via Emirates flight.

On whether the 31 packets were seized from the accused person, the prosecution evidence to support the contention that the 31 packets with contents suspected to be narcotic drugs was seized from the accused person, was that of PW5, PW6, PW8 and PW10, Exh. P5, the certificate of seizure, the luggage tags, that is, Exh. 11(c), and Exh. P11(a) the Airline ticket. PW5 stated that upon arresting the accused person, they took him to the anti-drug unit office situated at JNIA. That upon learning, from the accused person's non responsive reactions when they questioned him, and discerned that accused person was unable to communicate in neither Swahili or English, and only used Spanish, they found someone to translate so that they could communicate with the accused person. The said interpreter was PW8, one Chama Pembe Kigumi, a taxi driver. PW8 narrated how he became conversant with the Spanish language, stating that though he had not received formal education in the language but he had stayed in Spain for six years. That while there Spanish was the mode of communication he used at his place of work, a Tiles Factory and at home, where he had a live in Spanish girlfriend. That while in Spain he lived in Barcelona.

PW8 testified that on the 16/11/2017 around 16.00hrs while at JNIA, where he is a taxi driver, a Tanzania Port Authority officer and a police officer came to where he and colleagues were sitting and asked if there was anyone who spoke Spanish. That his colleagues pointed out to him and he stood up and went close to the officers who told him there was a person who could not communicate with them, since he only spoke Spanish. That the officers requested him to go

and assist them to translate, Swahili to Spanish and vice versa. PW8 stated that he agreed to assist and went with the two officers inside in one of the offices, where he met six officers and the accused person, of whom PW8 managed to do a dock identification. That the officer, Afande Hassan (PW5) told him to tell the accused person that they wanted to search him. That he communicated with the accused who agreed and he relayed this information to the officers. That there were two bags with the accused person, one pink and one purple in colour and that one bag was larger than the other.

That thereafter, the officer, Afande Hassan started searching the accused person. PW8 testified that he first witness a body search being conducted on the accused person where a passport, a wallet and various documents were retrieved and put on a table. That thereafter, the officer proceeded to search the two bags, opening one after the other. That first, clothes were removed from the bags, then the bags were ripped and the wheel pipes were seen and upon knocking the pipes, some pieces came out from the pipes. The pieces he witnessed were wrapped in black cello-tape. That after the first bag, they moved to the second bag, where they did similar to what they did in the first bag, and again after ripping the pipes holding the bag wheel, again upon knocking them pieces fell off from the pipes. The pieces in the second bag were also wrapped in black cello-tape. That when the pieces were counted,, there were 16 pieces, in different sizes from the purple coloured bag and 15 pieces in different sizes from the pink coloured bag.. That he was told to tell the accused that the contents of the pieces retrieved from the bags flour like, they

suspected to be narcotic drugs. That when removing the pieces from the pipes, one piece broke/was ripped and substance which was flour like could be seen. PW8 also testified that thereafter, a form was filled which they were required to sign and he had to inform the accused to sign after he had read the contents to him, and the accused person signed it.

PW8 also managed to identify the two bags he had seen at the airport, that is Exh.P2 (a) and Exh. P2(b). PW10- Boniface Mayala, immigration officer at JNIA, testified his knowledge of the accused person, meeting him for the first time on 16/11/2017 at JNIA. That on that day he was directed by his supervisor to be a witness in the search on whether or not the accused person had narcotic drugs. That at 11.00hrs on the respective date, immigration received information from Interpol of a suspect who was trafficking drugs and expected to arrive by Emirates Airline at 16.00hrs. That when Emirates arrived, his supervisor told PW10 that the suspect has been identified so he should be attentive and he was directed to join Interpol officers.

The witness stated that he saw the suspect (the accused person), where after finalizing the visa stamping moved to take his luggage and then put them to be scanned then immediately after the scanning, the accused was picked up by officers for questioning. PW10 joined the police officers to the Interpol office within JNIA. That after discerning the accused only spoke Spanish, an officer was sent to get someone to translate, a taxi driver had been mentioned. That

the accused person had two bags, one was pink and the other purple in colour. That upon arrival of the taxi driver, who upon arrival started speaking with the accused and PW10 gathered they were communicating. That the taxi driver was told to inform the accused person they were police officers who wanted to search him. That thereafter, Inspector Hassan led the search, starting with a body search and then moved to the bags. After removing clothes from the bags, in the pipes in the bag, they pipes upon being knocked, pieces fell from the pipes. The pieces contents had substance like flour which they suspected to be narcotic drugs. That in the Purple bags, 16 pieces were retrieved from the pipes and 15 pieces from the Pink bag. That the pieces were covered in black cellotape. Thereafter a certificate of seizure was filled, where all those who witnessed signed, PW10 being one of those who signed, and that the accused person also signed. PW8 and PW10 identified the certificate of seizure Exh. P5, to be the document they signed after the pieces were retrieved from the two bags.

On the part of the accused person, he challenged the arrest stating he was unlawfully arrested and he was not informed of his rights, especially since Swahili was used, a language the accused person was not conversant with. That PW5 had conceded that he could not communicate with the accused person. Therefore they argued from this evidence, the accused person was never informed why he was arrested. The defence referred to section 48(2) of the Drug Control and Enforcement Act 2015 as amended in 2017 and quoted a book on Trial Observation Manual for Criminal Proceedings,

Practitioner Guide No. 5, published in Geneva Switzerland 2009 especially page 58 para 6 and page 59. Therefore, they argued that the arrest of the accused person was unlawful. Unfortunately, they did not go further to address the Court on consequences of an unlawful arrest.

The accused person also denied any knowledge of the two bags- the pink and purple bags, that is, Exh. P2(a) and Exh. P2(b), stating they did not belong to him. That he had two bags on arrival plus a knapsack, and that they were all black in colour. That he has no knowledge of the 31 pieces alleged to be retrieved from the two bags. With regard to the certificate of seizure (Exh. P5), the accused person acknowledged it has his names and signature.

The accused person had at first denied knowledge of the luggage tags Exh.P11(c) though acknowledging that they have his name but he did not recognize them. The accused person upon being shown Exh. P2(a) and 2(b) acknowledged the fact his name appears and that it has EK0725, the flight number of the flight he took but stated that, it is the company who put luggage tags and not the traveler. That the luggage numbers have the name Santillan Wallestein on them and similar to the luggage number in Exh. P11(b), but stated that his luggage was checked in Brazil and never saw them until in Dar es Salaam. He also acknowledged that the tags in Exh. P2(a) and P2(b) are the same one which were put in the bags in Brazil and have the date 15/11/2017. Overall the accused stated the luggage tags are his but not the luggages.

The defence also challenged the certificate of seizure, Exh. P5 on the ground there were contradictions in evidence of witnesses or whether it was filled at the Interpol offices (PW6 and PW10) or airport police station (PW5).

Having considered the prosecution and defence evidence expounded on the issue under discussion, I premise with the assertion by the defence that the accused person was arrested unlawfully, procedures not being complied with. It is pertinent to revisit the provisions of section 48 of the Drug Control and Enforcement Act as amended, which provide for arrest procedures. It should be important to understand that Section 48(1) after the 2017 amendments now reads

> "*Subject to the provisions of this Act, the procedures and powers conferred to the officers of Authority under this Part, shall be followed, unless in all circumstances it is unreasonable or impracticable to do so*".

Suffice to say, this provision provides for the person implementing this, to determine where it is unreasonable or impracticable to follow all the arrest procedures outlined in the Act. PW5 evidence was that he only found out that the accused person did not understand Swahili or English after stopping him and introducing himself and requesting the accused person to go with them for questioning. But PW5 stated that, despite this he managed to communicate with him a bit in English and sign language, leading the accused person to follow him in the office at JNIA. Bearing in mind the situation, in the

absence of an interpreter on hand at the time of stopping the accused person before he left to go outside, one cannot condemn the arresting officers for not informing the accused person of reasons for being taken for questioning at that particular time. PW5 and PW6 stated that, on arrival at the officer, they immediately sent officers to find someone who could assist in translation hence PW8 was found and brought to the office. There is no doubt that, what was done was the quickest and most practicable thing to do under the circumstances.

It is in evidence from PW5, that after the arrival of PW8, through him, the accused person was informed why he was under restraint, that he was suspected of trafficking narcotic drugs. It is important to understand, that at the time of arrest, the important thing is for the accused to understand the substance of the offence he is suspected to have committed. From the evidence in Court, even provided by the accused himself, there is no doubt he was made aware of this, hence his signing of exhibit P5. Therefore, we find no evidence of unlawful arrest and that the prosecution have proved they did all the needful in the circumstances pertaining at the time of arrest of the accused person.

At the same time, I find there is a misconception on the part of the defence on the evidence relating to where the accused was taken and the search was conducted after the accused person was put under restraint. PW6, stated that the accused person was taken to an office within JNIA but that they opened a file at the Airport Police Station. PW 10 evidence was that, they went to the Interpol office

within the JNIA. So what is clear can also be taken from the evidence of the accused person that, upon the accused person being under restraint, he was taken to an office inside JNIA- an office where police officers are situated. PW5 stated it was the Anti- Drug unit office within JNIA. We find this discrepancy in stating the name of the office is not very material enough to render the certificate of seizure, which the accused admitted to have his signature, incompetent.

Also having regard to the evidence by PW6, PW10 and PW5 on seeing the accused persons taking two bags- pink and purple bag, and also PW8 seeing the two bags in the office he met the accused person and all these witnessing the search and what was retrieved and seized. PW6 evidence is also supportive on this issue.

There is also the issue of the luggage tags, which the accused person acknowledge to be the same ones he was given in Brazil, It is my view that, the prosecution have proved that the two bags the purple and the pink bag, that is, Exh.P2(a) and 2(b) belong to the accused persons, and they are the ones which came from Brazil. That being the case, with the evidence on what was seized from the two bags, the 31 packets, we find there is no doubt that they were retrieved from the two bags. That is, 16 packets from the purple bag and 15 packets from the pink bag. We have reached this position also having considered the credence and competency of the witnesses who testified before the Court. We find the witnesses for the prosecution who testified on the issue at hand to be truthful and spoke with conviction and therefore find no reasons to disbelieve them as invited

to do so by the defence. Any contradictions we find them to be minor as addressed hereinbefore. Therefore, the first issue is answered in the affirmative. That that the accused person was arrested at JNIA on the 16/11/2017 and found carrying 31 packets suspected to contain narcotic drugs in two bags.

Having found the first issue in the affirmative, we move to the second issue relating to whether the 31 packets found in the accused person's two bags contained narcotic drugs that is, cocaine hydrochloride. Starting with the prosecution case, they contended that, the evidence of Theodory Erasto Ludanho (PW1), a Government Analyst from the Chemist Laboratory Authority, Exh. P3, the forensic science, the 31 packets in two envelopes admitted and marked as Exh. P1(a) and Exh. P1(b) established that the narcotic drugs found in the 31 packets were cocaine hydrochloride. That this was also established by the evidence of PW1 who stated that both the preliminary and confirmatory tests established this fact.

For the defence, they contended that they found it confusing how the Government Laboratory authority conduct their duties when analyzing narcotic drugs, arguing that the report, that is Exh. P3 is incomplete. The reasons for this assertion is the fact that though the analysis of exhibits is done by one person but the report is signed by two persons, the second person being someone who was not part of the analysis. The defence counsel also challenged the dates recorded in the report, that while on page 2, it is dated 28th December 2017 but at the bottom of page two it is dated 14th day of December 2017.

The other issue raised by the defence, was that PW1 being a Government employee, and the fact that the exhibits were submitted to him by PW5, a law enforcement officer and thus the neutrality of PW1 in analysis of the exhibits at issue is questionable.

The defence counsel also challenged the mode of analysis of exhibits by PW1 that is of taking samples from one packet after the other without writing anywhere. In effect stating, taking these factors in consideration PW1 conclusions/results of the analysis are also questionable and thus the Analysis report is not reliable and that the Court should find so.

The defence cemented their argument citing an article from the Ohio State Law Journal, Volume 49, Number 3, 1988, Giannell, Paul C., "***The Admissibility of Laboratory Reports in Criminal Trial:The Reliability of Scientific Proof***" Pgs 694 and 695, where Professor Anna Hanson, stated:

"*for a report from crime laboratory to be deemed competent, I think most scientists would require it to contain a minimum of three elements;*

a. *A description of the analytical techniques used in the test requested by the government or other party;*
b. *The quantitative or qualitative results with any appropriate qualifications concerning the degree of certainty surrounding them*
c. *An explanation of any necessary presumptions or inferences that were needed to reach conclusions*"

Therefore it was the defence contention that when taking into consideration the above guidelines, it is without doubt that Exh. P3 does not comply and that the Court should also find PW1 unreliable so is Exh. P3.

Having considered, the submissions and evidence from the prosecution and defence on this issue, and considering our findings above on issue No. 1 and 2, there is PW5's evidence, who was the one who seized Exh. P1(a), Exh.P1(b), Exh. P2(a) and Exh. P2(b) from the accused person at JNIA on the 16/11/2017. From the testimony of PW1, he received the said exhibits on the 20/11/2017 from PW5 who was accompanied by PW3, this fact is confirmed by the evidence of PW3 and PW5. PW1 stated he receive two envelopes marked "A" and "B" and two bags also marked "A" and "B" and also each envelope containing a file number. That they were handed to him with Form DCEA 001 (Exh. P4). That Exh. P4 is titled "*Fomu ya kuwasilisha Vielelezo Maabara Kwa Uchunguzi wa Madawa ya Kulevya*", unofficial translation is *"a form for presentation of exhibits to the Laboratory for Analysis of Narcotic drugs"*. Inside there is a description of the contents, stating there is an envelope marked "A" containing 15 packets suspected to contain narcotic drugs and envelope marked "B" containing 16 packets suspected to contain narcotic drugs.

Therefore, from the evidence of PW1, in total, he received 31 packets from PW5, and it is this packets which he analysed and gave a report marked Exh. P3, stating that the 31 packets contained,

cocaine hydrochloride. That he did a preliminary analysis upon receipt on the 20/11/2017 in the presence of PW3 and PW5 and then a confirmatory test with the samples he took from each packet. Exh. P3 also highlights the weight for the contents of the 31 packets. For the packets in Envelope "A" the cocaine hydrochloride weighed 907 grams and for those packets in envelope "B" they weighed 518.78 grams. There is also the evidence that Exh. P2(a) and P2(b) were also found to contain semblance of cocaine hydrochloride. Remembering that, there is evidence that, Exh. P1(a) and P1(b) were retrieved from the said two bags.

I have considered the raised concern by the defence on the reliability of the analysis conducted by PW1 and Exh. P3. It should be borne in mind that, the evidence of PW1 shows he has adequate experience in analyzing exhibits, he is a gazette government analyst and he is therefore an expert. It should also be borne in mind that vide section 48A (2) of the Drug Control and Enforcement Act, No. 5 of 2015 as amended by Act No. 15 of 2017, a report by the Government Analyst is conclusive unless rebutted. For ease of reference we import the relevant provisions.

Section 48A (1); "*The Government Analyst to whom a sample of any narcotic drugs, psychotropic substance, other substances suspected to have drug related effect has been submitted for test and analysis shall deliver to the person submitting it, a signed report in quadruplicate in the prescribed form and forward one copy thereof to such authority as may be prescribed.*

48A (2); Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by a Government Analyst shall be admissible in evidence of the facts stated therein without formal proof and such evidence shall unless rebutted, be conclusive".

There has been no recorded rebuttal of Exh.P3, and in any case from the evidence of PW1, their report to the submitting authorities do not include any scientific information. If the defence wanted the Court to be availed of such information, they should have been the ones to seek it and show where they find to be discrepancies or to challenge the findings as expounded in the contents of Exh. P3. We thus find there is no evidence before the Court to discredit Exh. P3 as it is.

We also find that the evidence of PW2, SP Neema Mwakagenda useful, since she testified that she was handed two envelopes which in total contained 31 packets of substance suspected to be cocaine, from PW5 on the 17/11/2015 around 14.00hrs. That on the same day at around 16.00hrs, the said packets were handed to PW3 for packing in readiness to be taken to the Government Laboratory Authority. That she was present and supervised the packing of exhibits. That she had put the file number JNIA/IR/172/2017 on each envelope, marked them "A" and "B" respectively and stored them after the packing and sealing, which was witnessed various people, including PW4. That there were signatures on the envelope and the markings which were acknowledged by PW1 to have been there when

he received the exhibits. That the packing was done on Friday and therefore PW2 stored in the exhibit room. On 20/11/2017 morning hours, PW2 handed the exhibits to PW5 to take to the Government Chemist Authority for Analysis.

We thus find that the totality of the evidence and submissions by the defence and prosecution before the Court on this issue as outlined above, leads this court to find evidence of PW2 and Exh. P3 reliable and credible and submissions presented to discredit this evidence does not hold water for reasons stated hereinabove. We thus find issue No 2 answered in the affirmative. That is, that the 31 packets found with the accused person at JNIA on the 16/11/2017 to contain narcotic drugs, that is, cocaine hydrochloride.

The third issue for consideration is whether the accused person was found trafficking cocaine hydrochloride into the United Republic of Tanzania as charged.

That is, the 31 packets, Exh. P1(a) and Exh. P1(b). For the prosecution side, they submitted that there is direct and documentary evidence to prove this. That there is the evidence of PW5, PW3, PW8-Manuel Cassiano Bakari, PW7 and PW8- Chawa Kigumi- who was the interpreter at the time of arrest at JNIA. That there is also the certificate of seizure in respect of alleged drugs and accused person's articles- that is, Exh. P6.

The prosecution contended that further to this, there is also the evidence of the accused person who stated that on the material date he was travelling by Emirates Airline flight 725 from Brazil to Dar es

Salaam via Dubai carrying two bags. That at check-in in Brazil, he was issued with luggage tags bearing his name, number and flight name. That the prosecution managed to prove this, through the admitted airline ticket for the accused person, that is Exh. P11(c), two bags admitted as Exh. P2(a) and Exh. P2(b) whereby the 31 packets proved to contain cocaine hydrochloride (Exh. P1(a) and Exh. P1(b) were retrieved and seized. That from this importation of goods which is an element of trafficking has been proved.

The prosecution further contended that the accused person defence, which was total denial of the charges, has not raised any doubt to the prosecution case, be it reasonable or otherwise to counter the evidence against him submitted by the prosecution. That the accused person defence of total denial, including denying being the owner of the two bags, and only trying to expound that the case against him is fabricated, a frameup instigated by the Police for reasons better known to themselves is weak and grounded on lies. That the Court should consider the fact that at the Preliminary Hearing stage, among the undisputed facts was that the accused person had travelled from Brazil to Tanzania via Dubai vide Emirates Airline and when he was cross examined by the prosecution counsel, the accused confirmed the fact that he has no grudges with the witnesses who testified before the Court. Thus the prosecution prayed the Court to find the defence a pack of lies and weak not grounded on any tangible evidence. The case of ***Felix Lucas Kisinyila vs Rep.***, Criminal Appeal No. 129 of 2002, CAT Dar es Salaam (unreported) at pg. 6, where it is stated:

"... the lies of an accused person, appellant here, may corroborate the prosecution case ... quoting the case of Kambo Bin Khamis vs. the Crown SXRL, 122".

From this case, the prosecution counsel argued that, the alleged lies by the accused person should strengthen the prosecution case to the extent of the lies intended to help exonerate the accused person from the hands of justice. Thus in total the prosecution prayed the Court to find that they have proved their case against the accused person beyond reasonable doubt and to find the accused person guilty as charged.

On the part of the defence, it was their contention that it was the burden of the prosecution to prove this and they have failed and the fact that, the accused person has no burden to tell the truth but just to raise doubts on the evidence of the prosecution. Relying on the case of ***Rep vs Kapere Mwaya*** (1948)15 EACA 56, that; "*a person is not guilty of a criminal offence because his defence is not believed, rather a person is found guilty and convicted of a criminal offence because of the strength of the prosecution evidence against him which established his guilty beyond reasonable doubt*". The defence also challenged the credibility of witnesses who testified on this issue. The other issue raised by the defence on the issue was allegations that the prosecution failed to call important witnesses whose evidence was crucial in proving their case against the accused person.

The defence argued that not calling one ACP Kabaleke, for whom PW5 had testified as the source of information leading to the

arrest of the accused person to be an error of judgment on the part of the prosecution. That his evidence would have assisted the Court on the source of information that the accused was trafficking narcotic drugs. That without his evidence there are doubts raised especially where if the goods came from Brazil how come all the Airports from the check-in point, to Dubai where the accused had transited, why the said narcotic drugs were not detected, and where did the two luggage tags come from, for the defence absence of ACP Kabaleke strengthens their case that, the case against the accused person is fabricated and therefore charges against the accused person should be dismissed.

Having gone through the submissions from the prosecution and the defence addressing the issue under consideration, we reiterate out finding above that, it is the accused person who was arrested at JNIA on the 16/11/2017, upon arrival via EK 0725 at around 16.00hrs. There is also the fact that he was arrested with two bags carrying 31 packets, which we have also found that the packets contained narcotic drugs, cocaine hydrochloride.

Under section 2 of the Drug Control and Enforcement Act, Act No. 5 of 2015 as amended by Act No. 15 of 2017, "Trafficking" means the importation, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery or distribution, by any person of narcotic drugs or psychotropic substance any substance represented or held out by that person to

be a narcotic drug or psychotropic substance or making of any offer but shall not include-..." which is prescribed under (a) to (e).

Having regard to the evidence before the Court, we find that importation was proved, in terms, that there is evidence that the accused person was arriving from Brazil via Dubai carrying the 31 packets with narcotic drugs as expounded herein above. There is no evidence before the Court that the accused person holds a licence under this Act with regard to the narcotic drugs found in his luggage, nor that he carried the narcotics under instruction of a medical practitioner, or he is a registered pharmacists who sells narcotic drugs. The Court has also already found PW5, PW6, PW8 to be credible witnesses, who told the truth with regard to the arrest of the accused person, also PW1 with regard to analysis of the contents for the 31 packets found in the accused person bags. The so called contradictions of their evidence as raised by the defence, we have already hereinabove, found to be minor not going to the root of the evidence metted in Court pertaining to issues identified.

The defence argument that the absence of certain witnesses such as ACP Kabeleke renders the prosecution evidence weak has been considered. On this issue, let be understood that, the duty to call witnesses or to bring evidence to prove a case for prosecution lies on the prosecution itself. The law does not in any way force the prosecution on what evidence to bring to the Court. It is incontrovertible that in terms of section 143 of the Evidence Act, no particular number of witnesses is required in any particular case for

the proof of any fact. This has been stressed in a range of cases. In the case of ***Gabriel Simon Mnyele v. Republic***, the court emphasized that:- "... *under section 143 of the Evidence Act (Cap 6-RE 2002) no amount of witnesses is required to prove a fact"*

But at the same time, being aware that despite the above position, it is also the law (section 122 of the Evidence Act) that the court may draw adverse inference in certain circumstances against the prosecution for not calling certain witnesses without showing any sufficient reasons - ***See Aziz Abdalla v. Republic (1991) T.L.R.71***. Taking all these positions in consideration, having in mind the circumstances of this case, this Court finds that with the evidence on hand, failure to call ACP Kabeleke did not in any way weaken the prosecution case on this issue under discussion nor was it in any way prejudicial to the case for defence to warrant this Court to draw an adverse inference. In any case the defence was free to call the relevant witnesses to testify on their side if they so desired. Therefore, taking all these factors in consideration, we find that the prosecution have proved that the accused person did traffic narcotic drugs as charged.

The fourth issue for consideration is whether the chain of custody was not broken from the point of seizure at JNIA, storage, analysis up to being tendered in Court and admitted as Exh. P1(a) and Exh. P1(b) and also the bags, Exh. P2(a) and Exh. P2(b). For prosecution, the chain of custody regarding the 31 packets in contention has been established by the fact upon being seized at

JNIA, they were put into two envelopes and marked A and P respectively according to the evidence of PW5- Insp. Hassan Masawike, the arresting officer. That the other witness who also addressed this issue was PW2, SP Neema Mwakagenda, the exhibit custodian, at the Anti-Drugs Unit situated at Police Ufundi, Kurasini. The other witnesses were PW3-Insp. Musoke, PW4 Mashaka Abdi Hamad, who was an independent witness when the alleged narcotic drugs were packed in readiness to be taken to the Government Chemist Authority offices for analysis. Another witness for the prosecution addressing this matter was PW7- D/Sgt Ched and PW1. That all these witnesses managed to prove that the Exh. P1(a) and Exh. P1(b) on one hand and Exh. P2(a) and Exh. P2 (b) respectively were handled properly from JNIA up to the point the exhibits were brought and tendered in Court.

The prosecution submitted that the Court should consider the fact that chain of custody may be proved by oral and documentary evidence or both. To support this contention, a Court of Appeal case of ***Goodluck Kyando vs. R*** (1985) TLR was cited. In this case it is contended that it was held that, witnesses are entitled to their credence and their testimonies must be believed unless there are cogent reasons for questioning their credibility, and where such is the case, then strong reasons must be given and not mere speculations that the witnesses might have lied. Another case put forth for the Court consideration was ***Charo Said Kimilu and Mbwana Ruakubo vs. R.***, Criminal Appeal No 111 of 2016, CAT at

Tanga, where it was held that, chain of custody of narcotic drugs may be proved by oral evidence.

For the prosecution, the testimony of SP Neema (PW2), was relevant and adequate to prove how the relevant exhibits, that is, the 31 packets were stored, and how she avoided a mix-up with other exhibits. That PW2 had also expounded on how the exhibits were packed, and in the presence of witnesses and the accused himself and an interpreter for the accused person. That there was also an independent witness, PW4. Therefore from this, the Prosecution implored the Court to find no room to find that there was a possibility for tempering with the exhibits in question.

The defence challenged the chain of custody of the alleged exhibits, that is, 31 packets alleged to have been seized from the accused person at JNIA. Arguing that the fact that PW5, who is not a known custodian of exhibits, kept the packets for 23 hours from 16.00hrs of the 16th of November 2017 up to 12.00hrs on the 17th of November 2017 raises serious doubts on the sanctity of the chain of custody. That the fact that no witness so PW5 put the exhibits in envelopes or label them then PW5 testimony is not substantiated and they could be a possibility that he planted the drugs in the envelopes. That the handling of exhibits was also improper and raise doubt on the chain of custody. This is because the defence counsel argued there is no handling or handover report produced in Court to show the handover between PW2, PW3 and PW5, that is, from the time the exhibits were seized, stored at the Exhibit room, packed, taken for

analysis to the Government Chemist Authority and back for Storage to PW2.

That having regard to the testimony of PW5, it is suspicious that when he went to the Centre for Foreign Relations to get an interpreter, PW5 had still not handed over the exhibits to PW2. The defence cited the cases of ***Abuhi Omary Abdallah and Others vs. Rep***, Criminal Appeal No. 28 of 2010 CAT (unreported); ***Paulo Maduka and Others vs. Rep.***, Criminal Appeal No. 110 of 2007, which discussed the idea behind recording chain of custody and also what chain of custody entails. Thus the defence argued, that taking in consideration the holdings in the cited case, the prosecution did not establish that the guidelines set to show chain of custody have been complied with and thus the accused should benefit from doubts emanating from this situation.

Consideration has been made on all the submissions, evidence and cases cited by the prosecution and defence, each for the purpose of supporting their respective positions on this issue. The meaning and importance of not compromising chain of custody of exhibits is expounded by the Court of Appeal in various cases. In Criminal Appeal No. 348 of 2015, ***Zainab Nassor@ Zena vs. The Republic*** and Criminal Appeal No. 28 of 2010, ***Abuhi Omari Abdallah and others vs. Republic*** the Court of Appeal in effect propounds that evidence should show how each stage of handling of exhibits was done from when they are seized, stored, control and transfer. Also

being aware of the various legal provisions on handling of exhibits from time of seizure.

At this juncture it is important to understand that having regard to the circumstances pertaining to this case, I find distinguishable the case of ***Abuhi Omari Abdallah and 3 o***thers (supra) cited by the defence counsel. In the said case the witnesses before the Court, failed to establish where the exhibits were stored for safe custody, while in the present case PW5 testified that he had put the exhibits in two envelopes and labeled them "A" and "B" in accordance to how the pieces were retrieved and the bags they came from. This fact was supported by PW2, stating when she received the envelopes from PW5, they were marked "A" and "B" and she added the case file number. PW2 expounded that the exhibits were stored at the Anti- Drug Unit exhibit room, it being the storage place for the unit.

Whilst the Court is aware of a chain of precedents of the Court of Appeal settling the proposition that the exhibits must not only be properly handled, but each such stage of custody through which they pass must be shown and tendered in Court. The case of ***Paulo Maduka and others vs Republic***, Criminal Appeal No. 110 of 2007 amplifies this where it was held:

> *"By "chain of custody" we have in mind the chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, 19 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 appear guilty. Indeed, that was the contention of the appellants in this appeal. 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".

At the same time guided by the holding in the case of ***Charo Saidi Kimilu and Mbwana Rua Kubo vs Republic***, Criminal Appeal No. 111 of 2015, pronounced on the 16th of September 2015 at pg. 17, and the Court of Appeal stated that, chain of custody may be proved by oral evidence. " *We are also of a considered view that, the chain of custody was not broken from the time of arrest to testing by the Chief Government Chemist and tendering in the trial Court relying on the evidence of PW2, PW3, PW4 and PW4*". We find this case having delivered in 2015, has expanded on previous holding of ensuring that chain of custody is not broken, by holding that oral evidence of witnesses is enough to prove handling of exhibits, binds this Court to consider when determining chain of custody of exhibits.

The other matter raised requiring consideration by this Court, when determining the issue on hand, is alleged delay in handing over of exhibits from PW5 to PW2. It is in evidence vide the PW5 testimony, that upon seizing the exhibits from the accused person, he recorded all the items in the certificate of seizure, that is, Exh. P5 which was signed by the witnesses and the suspect where he recorded the contents of the envelopes and other items seized from the accused person. PW5 testified that the delay to hand over the exhibits to PW2

was due to the fact that, on the respective day, he completed writing the suspect statement at 22.00hrs at night, which was late and their offices are situated at *Kurasini Ufundi* and he was at JNIA. That by that time the Exhibit custodian PW2 was no longer in the office. Having called her. So he decided to store the exhibits in his cabinet at JNIA. That he handed the exhibits to PW2 on the 17/11/2017, the next day. PW2 amplified during cross examination that he had labelled the envelopes as "A" and "B" at JNIA and handed them to PW2 on the 17/11/2017 at 14.00hrs.

On this issue, the testimony of PW2 was that on 17/11/2017 while at ADU offices situated at Kilwa Road, Ufundi Area in Temeke, she received exhibits from PW5, in total 31 packets suspected to contain narcotic drugs, which were in two envelopes. One envelope had 15 packet and the other 16 packets, and she also received two bags, one pink and the other purple in colour. Upon being handed the envelopes she verified the contents and she then proceeded to register them in the Exhibit Register. (the register was not tendered in Court). That there was a reference No. JNIA/IR/172/2017, which is the number she registered the exhibit handed to her that day. That she then market the envelope with 15 packets "A" and the one with 16 packets was labeled "B". The same for the bags, the pink was marked "A" and the purple was marked "B". The packaging was supervised by PW2, and it was PW6 was the one packing. PW4, Mashaka Abdu Amani, testified that he witnessed the packing of the exhibits, another witness was PW10, who also testified to have witnessed the packing and sealing of the said exhibits. After packing,

they were labeled "A" and "B" respectively and also the file number was put for each envelope, and signatures of the person packing, the witnesses and the accused person whose thumbprint was also put and then the envelopes were sealed. PW3 narrated how he packed the exhibits on the 27/11/2017, supervised by PW2 and how he escorted PW5 to the Government Chemist Authority for analysis on the 20/11/2017. That on 17/11/2017 around 11.00hrs he went to the Centre for Foreign Relations to look for an interpreter. That the packaging of exhibits was around 14.00hrs on the same day. He narrated how he packed and the labelling on the two envelopes including the Police file number, seal and the lab number and stamp which was put by the officers of the Government chemist office, where PW3 had escorted PW5 with the exhibits. PW3 narrated the markings on the envelopes to be the signatures and seal, which he also identified in Court with Exh. P1(a) and Exh. P1(b). That after packing the exhibits he handed them back to PW2.

PW1 testified to have seen all the said markings, seal and labels when he received the two envelopes on the 20/11/2017 and that after the analysis he handed back the exhibits to the officer who brought them after having signed the exhibits, put the Government Chemist Authority Seal and stamp. In Court he identified and recognized his signature, the office stamp and seal, and the labels he has seen when he was handed the exhibits. PW4- Mashaka, Abdi Hamadi, who is a street Chairman at Keko Machungwa, Police Barracks witnessed the packing of the exhibits. PW3 testified how he attended and witnessed the packing which started around 12.20hrs

to 15.20 hrs. He also stated the labels put on the two envelopes, the seal and the signing on the envelopes, where all witnesses including the suspect signed. PW5 stated during cross examination that he had cellotaped the two envelopes with the exhibits at the airport before storing them in his cabinet for safekeeping having labelled them though they were not sealed but that he locked his cabinet.

With regard to the argument that PW5 had not handed the exhibits to PW2 by the time he went to get PW9 the interpreter at the Centre for Foreign Relations, this is not supported by evidence, since, PW9 states that at 13.00hrs he was called to the office of his leader and found two officers PW3 and PW5 and was asked to go assist in interpretation at Anti- Drug Unit. That he left with the two officers and upon arrival at the ADU office he saw the exhibits on top of the table, meaning they had already been handed to PW2 before PW5 left to take the interpreter. This is also supported by the evidence of PW4, Mashaka, that on arrival at ADU offices the exhibits were there. This augurs well with the evidence of PW5 that on 17/11/2017, he had passed to pick the accused from Central Police Station and taken him to ADU offices where he handed the Exhibits to PW2, then left to pick PW9. Having regard to the circumstances pertaining we are satisfied that there was no undue delay in handling of the exhibits to warrant an inference be drawn that it was unreasonable that warrants adverse inference or suspicions to be drawn on possible compromise on handling of exhibits. PW2 stated how she received the envelopes, and the 31 packets therein.

From the evidence before the Court, the Court is satisfied that Exh. P1(a) and Exh. P1(b) and P2(a) and P2(b) and Exh. P11(a) P11(b) and P11(c) from time of seizure, transfer and storage were handled properly. For Exh. P1(a) and Exh. P1(b) and P2(a) and P2(b, at the Airport there is evidence they were marked and Labelled and recorded in Exh. P4. Then handed to PW2, who testified she recorded them in the Exhibit Register after verifying the contents, then she put another envelope and labeled the envelopes and put the file number and stored them in the exhibit room. On the same day after receipt, that is, 17/11/2017, the exhibits were packed under her supervision witnessed by various people as narrated before and then sealed, and the envelopes signed and labeled with "A" and "B" and the file number and she put them back in the exhibit room only to hand over to PW5 on the 20/11/2017 to be taken to the Government Chemist office for Analysis. That later the same day she received the exhibits while sealed and with additions of the Laboratory Number 3160/2017, signature of the analyst, Government chemist office stamp and seal. That the envelopes were never opened but stored. PW1 was the one who unsealed the envelopes in Court and identified the seal, stamp and his signature and markings on the envelopes. From this evidence, I am of the view that the chain of custody was never compromised.

With regard to the issue regarding consideration of the defence raised by the accused person, whether it raises doubts to the prosecution evidence, it should be borne in mind that in consideration of each identified issue hereinabove, the defence case

was considered. Maybe it is important to also discuss the issue of language barrier which came out especially during the arrest of the accused person. This issue has already been discussed and determined earlier on, the argument being that, the person who was called as the interpreter/translator, at the time of arrest at the JNIA, that is, PW8, one Chawa Kigumi, a taxi driver at the airport, that one cannot state he is a qualified interpreter or translator to enable the accused person understand why he was being arrested and his rights.

It is well established by case law that, when addressing matters relating to their being a fair legal process for the accused person,that is from the time of arraignment to when the accused appears in Court, language and language barriers are interrelated concepts. Language is therefore a mean through which one can communicate in the pursuit for justice be it from the courts of law or law enforcement processes. This assertion is grounded on Article 13(6) of the Constitution of the United Republic of Tanzania, which states:

"To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the principles namely;

(a) *When the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned."*

The significance of the above provision and other provisos in the article is that it guarantees right to a fair hearing/trial and without doubt this right envisages language fair trial rights. In the case of ***Alex John vs. Republic***, Criminal Appeal No. 129 of 20016, CAT (unreported) it was stated that:

> *"It is settled law which binds us, that fair trial guarantees must be observed and respected from the moment the investigation against' the accused commences, until the final determination of the proceedings, the appeal process inclusive".*

From this holding it is significant to note the concept of fair trial have to be engrained from the time of arrest in the case of an accused person.

It is well known and provided by law that, the language known to a suspect or accused should be used to ensure he understands what transpires. It is an essential component of a fair legal process-for fair trial. That the important consideration is to assess whether he was able to communicate with the accused person and to the officers interrogating the accused person, that is, for both parties to understand each other through the clear interpretation from one language to the other. From the evidence of PW5, PW8, PW3 and PW6 and PW7 and PW9, we are satisfied that the accused person was facilitated to understand his charges and what he was being arrested from by virtue of availability of PW8 during the arrest and PW9 at the time of packing of the exhibits, which led to him signing on the

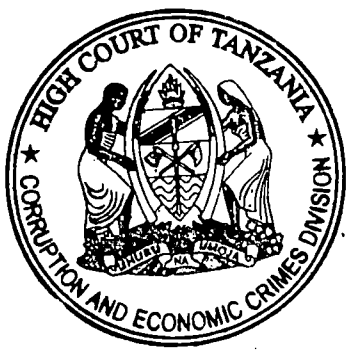
exhibits after packing them and also signing Exh.P4, the certificate of seizure. Thus, there is no evidence that the accused person was in anyway prejudiced to raise any concerns or doubts on the fairness of the trial process as against the accused person.

The other line of defence was that the accused person had arrived in the country for tourism purposes and nothing else. The Court has carefully considered this and finds nothing to substantiate this line of argument. There was no evidence on any itinerary regarding any touristic venture by the accused person. One would have expected a non-national, coming to Tanzania for the first time for tourism, there would be evidence of the touristic venture itself, that is, where he intended to visit, company or people who were to guide him and so forth. The Court is aware that the accused person is not required to prove anything or substantiate any assertions he makes, but just to raise doubts in the prosecution evidence but prudence requires that the evidence should at least believable somewhat to raise doubts. Scrutiny of the defence raised by the accused person leads the Court to find that it failed to raise doubts to the prosecution evidence on the charges against the accused person.

We now move to consider, the last issue, on whether the prosecution has proved its case beyond reasonable doubt as required, the Court finding in all the issues should be considered. Having considered all the evidence before the Court finds that the main ingredients in the offence charged against the accused have

been proved. The prosecution have proved that it is the accused person who trafficked the 31 packets found to contain cocaine hydrochloride; Prosecution have managed to prove first, that the 31 packets examined by PW1- and found to contain cocaine hydrochloride are the packets which were found with the accused person when he was arrested at JNIA. That it is the accused person who was trafficking the said 31 packets and that the chain of custody has been fully established and that the accused person has failed to raise any doubts in his defence to challenge the prosecution case.

All in all, the Court finds that the Prosecution have proved their case beyond reasonable doubt. Therefore the accused person is found guilty as charged. Consequently, the accused person Wallestein Alvarez Santillan is hereby Convicted of Trafficking in Narcotic Drug contrary to section 15(1)(b) of the Drug Control and Enforcement Act, No. 5 of 2015, read together with paragraph 23 of the Firs Schedule to and section 57(1) of the Economic and Organized Crime Control Act, No. 5 of 2015 as amended. Ordered



Winfrida B. Korosso

Judge

19th February 2019

Date: 19/02/2018

Coram: Hon. W.B. Korosso, J.

For Republic: Tumaini Kweka- State Attorney

For Accused: Anna Stella Celestine and Aubriet Kivea Advocate

Accused: Present

Interpreter: Joshua Kulwa Shindika – Swahili-Spanish-Swahili present

B/Clerk: N.C. Malela

Record

As a presiding Judge I was appointed Justice of Appeal and sworn on the 29th of January 2019. By virtue of Article 119 of the Constitution of United Republic of Tanzania 1977 (as amended) I proceed to deliver judgment.

Sgd: W.B. Korodso
Judge
19/02/2018

Court

Judgment delivered in open Court; this day in the presence of Mr. Tumaini Kweka; Principal State Attorney for the Republic, Ms. Aubriety Kivea and Ms. Annastella Celestine, learned Advocates representing the accused person. Also present is the accused person and the interpreter – Swahili – Spanish-Swahili as recorded.

Sgd: W.B. Korosso
Judge
19/02/2018

Prosecution

The accused person having convicted, we have no previous record of the Accused person. Offence of Trafficking in narcotic drugs is serious, having a multiple effect in the economy of a Country. Drug trafficking affects young people and is very dangerous. We pray the Court to impose a stiff sentence to the accused person, so as it acts a deterrent. The offence for which the accused person has been convicted has adverse social and economic impact. We pray the accused should be given the sentence provided by the law.

MITIGATION

Madam Judge, the accused is a foreigner. From the time he was arrested, he has never communicated with his family. His family is still unaware of his whereabouts. The accused person has a family he is a father with children, depended by his family. The accused has no record of engaging in criminal offence. The accused has been incarcerated for two years now. The accused has shown exemplary behavior.

Accused person

I have been framed. I have a family who are unaware of what is happening to me. I pray the Court to allow me to communicate with my family. The charges against me are not true. I pray to be allowed to melt with my family. What transpired is not true.

Sentencing

We have considered the statement by the prosecution on the fact that the accused person has no previous record, a fact reiterated by the defence counsel and the accused person himself. I have considered the mitigating factors has advanced by the defence, the fact that the accused person has been in custody for more than two years, the fact that he is a father, with children and wife who depend on him, a family he has not communicated with for a long time.

The fact that the offence he has been convicted is very serious, I have also considered. I have also considered the fact that the offence was committed prior to the operationalization of Act No.15 of 2017, which amended Act No.5 of 2015. Taking all these factors in considering Wallenstein Alvarez Santillan, is sentenced to **TWENTY YEARS IMPRISONMENT**. Ordered

Sgd: W.B. Korosso
Judge
19/02/2019

ORDER

The contents of Exhibit P1(a) and Exh. P1(b) are to be confiscated and then destroyed according to law under the supervision of the Deputy Registrar within reasonable time.

Ordered.

Sgd: W.B. Korosso
Judge
19/02/2019

Right of Appeal Explained.

Sgd: W.B. Korosso
Judge
19/02/2019