

**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT DAR ES SALAAM**  
**ECONOMIC CASE NO. 4 OF 2018**

**REPUBLIC**  
***VERSUS***

- 1. REMINA OMARY ABDUL**
- 2. MAEMBA JONATHAN MAEMBA**
- 3. SAID MAKONDE KITALO**

**JUDGMENT**

Remina Omary Abdul (first accused), Maemba Jonathan Maemba (second accused) and Said Makonde Kitalo (third accused) are jointly indicted for trafficking in narcotic drugs contrary to section 15(1)(b) of the Drugs Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the First Schedule to the Economic and Organised Crime Control Act (Cap. 200 R. E. 2002) as amended by Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. In the particulars of offence, the accused persons above named are accused that on 29.8.2017 at Kinondoni Ufipa area within Kinondoni District in Dare es Salaam region, did traffic in narcotic drugs of heroine hydrochloride weighing 201.38 grams. The accused persons denied a charge.

The summary of evidence presented by prosecution witnesses, as hereunder:

PW7 Insp Daniel Mteweale, who is an investigator at the Drug Control and enforcement Authority (DCEA), testified that on 29/8/2017 at about 20.30 hours he was informed by SSP Salmin that there were suspects by the names Remina Abdul and Maemba Jonathan Maemba involving in narcotic drugs business at Ufipa Street in Kinondoni. They organized a team and proceeded at Remina's house, where they arrived at around 20.45 hours and found Remina Abdul, Maemba Jonathan Maemba and Said Kitalo in the bar which is in the same compound, in front of Remina's house. They looked for a ten cell leader one Martin Luambo. At about 21.00 hours they conducted search in Remina's bedroom at a wardrobe, where they found thirty one sugar cubes contained in a small box (exhibit P3(b)). Thereafter moved to a sitting room where they found two packets which contained flour (exhibit P3(a), retrieved behind a television table. The thirty one sugar cubes and two packets were seized via seizure certificate exhibit P4. They took the suspects and exhibits to the office, where PW2 kept the thirty one sugar cubes and two packets containing flour into his cabinet and opened file DCEA/IR/07/2017. On 30.7.2017 at 9.00 hours PW2 handed over thirty one sugar cubes and two packets

containing flour to SSP Neema (PW3) who is the exhibit keeper. PW3 marked the thirty one sugar cube in a small box "B" and two packets marked "A", labeled DCEA/IR/07/2017, registered in the register book and packed in the presence of three accused persons, John Jacob Muhone PW5 (independent witness), Lazaro Raphael Mhego PW4 and DC Christina PW6. On 4.9.2017 PW3 handed over the thirty one sugar cubes into a sealed envelope "B" and two packets of flour into a sealed envelope "A" to PW4 who submitted them to the Chief Government Chemists, were received by Elias Mulima PW1 via form No. DCEA 001 exhibit P1. PW1 measure weight of envelop "A" had 201.31 grams and envelope "B" had 142.78 grams. Then conducted a preliminary test, where the contents of envelope "A" to wit two packets, the result showed the packets contained heroin and envelope "B" with 31 pieces did not contain narcotic drugs. Thereafter PW1 took samples from the contents in envelope "A" for confirmatory test. PW1 repacked envelope "A" and "B", sealed and handed over to PW4 who handed back to PW3 on the same date to wit 4.9.2017 at around 14.15 hours. It was the testimony of PW1 that he conducted the confirmatory test using a machine liquid chromatograph mass spectrometric using reference standard of heroin in analysis, which

confirmed that the flour in envelope "A" in the two packets contained heroin hydrochloride, as per a report exhibit P2.

When defending, the first accused (DW1) explained that three motor vehicles including a car make Noah, landcruiser and salon car with four people holding a gun parked aside her bar, put her under arrest. One of them insulted her by saying that she is killing peoples' children, beat her, teared her clothes and gained conscious only to find herself into a car make Noah near an entrance gate of her house. That she saw her son Maemba Maemba and the third accused into a car make Noah. Thereafter they were taken to Central Police where she was tortured. She refuted to have been searched at her home. She denied to have been found with narcotic drugs. She denied to have seen Christina PW6 and Martin Luambo on explanation that the later is living at Togo Street and not Ufipa street. That she was told by her house girl that they broke a door and entered into her bedroom. That she know nothing about exhibit P2. That she did not sign exhibit P4. That she was charged because of one Dina whom she was trading with. That she was taken into the same car where Dina was allegedly to have been removed.

Maemba Jonathan Maemba DW2 (second accused) defended that he is living with his father. That on 29.8.2017 he visited his mother

and proceeded to his grandmother where he had a meal. When he was going back to his mother, he saw a commotion, a lot of people gathered there and her mother was on the ground surrounded by people who were beating her. He intervened, where he was beaten by a heavy object, felt down and people strode on him and was handcuffed and taken into a car. Thereafter her mother was brought into car then were taken to Central Police where he saw the third accused. That he has never used narcotic drugs.

Said Makonde Kitalo DW3 (third accused) stated that on 29.8.2017 while coming from a mosque on a way to his grandfather at Ufipa street, he saw a commotion at that street. That he tried to inquire as to what is transpiring there, where he was arrested for uttering a word "unknown people". He was taken to Central Police. That there is no witness who said that he is involving in narcotic drugs.

Ms Tumaini Kweka Principal State Attorney, Tully Helela State Attorney and later Ms Mwachia Ahmed Senior State Attorney were for republic and Mr Nehemiah Nkoko learned Advocate was defending the accused persons. Both the defence and prosecution had filed closing submission which shall be referred to in the course of deliberation as the need will arise.

Issues for determination: first, whether the two packets containing flour were seized from the accused persons premises; secondly whether the two packets of flour were narcotic drugs; thirdly, whether the chain of custody was properly maintained.

For the first issue, the evidence presented by prosecution was simple and direct evidence. PW2 and PW6 explained consistently that they impounded two packets containing flour exhibit P3(a), at the sitting room, behind the television table. PW6 added that it was aside a deck. It is in evidence that a house belongs to the first accused, as explained by PW2, PW6, PW8 also a statement of a ten cell leader one Martin Luambo exhibit P6. The first accused did not refute a claim that she is a proprietor of a house. Her (DW1) defence that no search was conducted is unfounded and a story that she was told by her house girl that they broke into her house, are concoct. Equally an allegation that she lost conscious and found herself into a car at an entrance gate of her house, is farfetched from the truth. Similarly, an argument that she was arrested because of her trader partner one Dina, a story is hanging, as DW1 did not explain any burning issue with the said Dina. Literally speaking, the evidence presented by PW2 and PW6 that they conducted a search into the first accused house at a sitting room and found those two packets of flour, is watertight, cogent and

implicate the first accused. Although one can ask as to why PW2 and PW6 rushed to commence search into first accused's bed room, leaving behind PW7 who stated to had remained at a door of a sitting room patrolling. This is because PW2 stated that they had a prior information that potential suspected areas were sitting room and bed room. Indeed, the 31 pieces of sugar cubes were found in a wardrobe inside the bedroom and four packets of flour were found at the sitting room on the TV stand beside a deck. However as much there is no hard and fast rule on how and where search should commence, the same query is dissolved in that way. Therefore the defence by the first accused is dismissed.

PW6 had made a general statement that they got information that the accused persons are involving in narcotic drugs, use and dealing. But there was no such proof in respect of the second and third accused persons. The evidence presented at the trial is that all three accused were found at the bar, as put by both PW2 and PW6. There was no tenable evidence that the second and third accused were caught administering narcotic drugs. There was no evidence that the third accused was caught purchasing narcotic drugs apart from here and there allegations by PW2 and PW6 that they were told by the third accused that he went there to purchase narcotic drugs or that he is a user as put by PW2 during

reexamination. No evidence was presented by prosecution witnesses to prove that the arresting and searching officers had spotted a bed room of the second accused into the first accused's house or premises. A mere fact that the second accused is a son of the first accused, cannot be taken for granted that he is actually living there with his mother. It ought to be substantiated by evidence that the second accused is either habitant or resident there. Unfortunately, even a statement of a ten cell leader exhibit P6 is silent to this fact. What was contemplated by the ten cell leader is that a search was conducted into a house of the first accused, no more. In the premises a defence by the second accused that he was a mere visitor and the third accused that he was a mere passerby, are taken to have distanced them from the accusation.

Regarding an argument by the defence Counsel that exhibit P3(a) and P3(b) were not mentioned during committal or preliminary hearing, the same is an afterthought. As the said argument was not raised when the exhibits were tendered. As such the learned Counsel complaint that the accused were prejudiced has no leg to peg on.

The learned defence Counsel had raised an argument that the evidence of PW2 and PW6 was not corroborated, for a reason that



one Martin Luambo was not summoned instead his statement was tendered and admitted as exhibit P6. This argument is misplaced, as when the said statement was tendered, the defence Counsel did not object its admissibility. As such an argument that the procedure was flawed, or else no notice was issued or it was brought under inapplicable provision of the law, is legally untenable and cannot be entertained at this stage. More important, as alluded by the learned State Attorney, PW2 and PW6 were credible witnesses and the learned Counsel did not explain as to why they should not be given credence.

The learned defence Counsel hinted on the contradiction between PW2 and PW6, where the former said exhibit P3(a) was found behind TV cabinet and in his statement (exhibit D1) said it was found in the television table, while PW6 said it was retrieved from the TV stand beside the deck. However, the said discrepancy even if were there, are taken as minor and not fundamental as suggested by the learned defence Counsel. To my view, TV cabinet, television table, TV stand (beside the deck), essentially connote the same thing or location.

Therefore, the first issue is ruled in the affirmative against the first accused alone.

Regarding the second issue whether the two packets of flour were narcotic drugs. PW1 explained that he conducted a preliminary test where the contents of envelope "A" to wit two packets, the result showed the packets contained heroin. Thereafter took samples from the contents in envelope "A" and conducted the confirmatory test using a machine liquid chromatograph mass spectrometric using reference standard of heroin in analysis which confirmed that the flour in envelope "A" in the two packets contained heroin hydrochloride, as per a report exhibit P2. With this scientific analysis, it is ruled that the flour contained in the two packets were narcotic drugs called heroin hydrochloride.

With reference to a thirdly issue, whether the chain of custody was properly maintained. It is in evidence that after seizure, PW2 took the exhibits to the office, where he kept the two packets containing flour into his cabinet and opened file DCEA/IR/07/2017. On 30.7.2017 at 9.00 hours PW2 handed over two packets containing flour to SSP Neema (PW3) who is the exhibit keeper. PW3 marked the two packets marked "A", labeled DCEA/IR/07/2017, registered in the register book and packed. On 4.9.2017 PW3 handed over to PW4 the two packets of flour into a sealed envelope "A", the later submitted to the Chief Government Chemists, where it was received by Elias Mulima PW1 via form No. DCEA 001 exhibit P1.

PW1 conducted a preliminary test in respect of the contents of envelope "A" to wit two packets, repacked envelope "A", sealed and handed over to PW4 who handed back to PW3 on the same date to wit 4.9.2017 at around 14.15 hours. It can be said therefore that the prosecution had managed to establish a chronological event on sequence of custody in respect of two packets containing flour, exhibit P3(a).

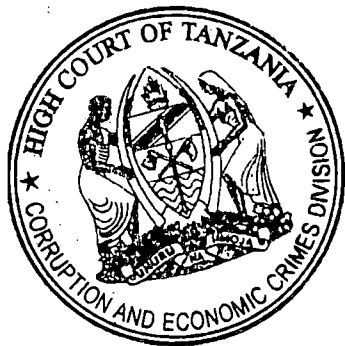
There was an argument that PW2 did not tender a dispatch book for handing over exhibit P3(a) and P3(b) to PW3. Admittedly the same was not tendered. Nevertheless, the same cannot be said to have amounted to breakage of chain of custody. As rightly submitted by the learned State Attorney, a chain of custody was established by oral testimony as depicted above.

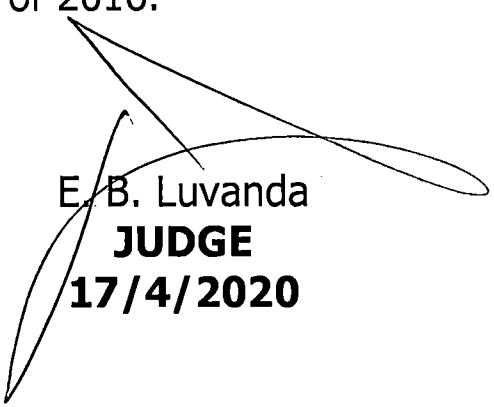
Finally, whether the act committed by the first accused person amounted to trafficking in narcotic drugs. According to penal provision to wit section 15(1)(b) of the Drugs Control and Enforcement Act, No. 5 of 2015, provide that it is an offence to traffic in narcotic drug or psychotropic substance. Section 2 of Act No. 5 of 2015 (supra) define trafficking to mean (and include) storing by any person of narcotic drugs.

Now, so far the two packets containing flour of heroine, exhibit P3(a) were kept by the first accused at her premises (sitting room). Therefore the first accused is taken to have been storing heroine, which amount to trafficking in narcotic drug within the purview of the definition of trafficking depicted above.

Having premised as above, I rule that the prosecution has managed to prove the charge laid against the first accused. Evidence against the second and third accused is wanting. The second and third accused person are acquitted.

The first accused is convicted for trafficking in narcotic drugs contrary to section 15(1)(b) of the Drugs Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the First Schedule to the Economic and Organised Crime Control Act (Cap. 200 R. E. 2002) as amended by Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.



  
E. B. Luvanda  
**JUDGE**  
**17/4/2020**