

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL SESSION CASE NO. 19 OF 2015

REPUBLIC

VERSUS

MWITEKA GODFREY MWANDEMELE

JUDGEMENT

4th & 23rd June 2021

Rwizile, J

The accused person was charged before this court on one count of trafficking in narcotic drugs contrary to section 16(1)(b)(i) of the Drugs and Prevention of Illicit Traffic in Drugs Act, [Cap 95 R.E 2002]. The prosecution alleged that on 11th May 2011 at Julius Nyerere International Airport within Ilala District in Dar es salaam region, the accused arrived from Doha Qatar by Qatar Air way which he had connected from Brazil. When he arrived at the Immigration desk, he was noticed trembling and sweating severely. When asked about what was the matter, he told the officer that he had swallowed narcotic drugs and so needed a quick clearance. The officer reported him to her supervisor. The accused was ultimately arrested by the Ant Drugs Unit police officer (ADU).

He was taken to their offices within the airport premises. Upon searching him, he was found in possession of 4 pellets hidden in his pants. From 11th to 14th May 2011, he was under observation. He in turn excreted 60 pellets. In total therefore, he had 64 pellets suspected to be narcotic drugs. Upon investigation, the pellets found trafficked were narcotic drugs namely cocaine hydrochloride weighing, 1,112 grams, worth 55,000,000/= . The accused was arraigned, hence these charges. In order to prove the charge, the prosecution tendered 17 witnesses. The prosecution also tendered 64 pellets

as P1, a report from the Chief Government Chemist on the pellets as P2, certificate of valuation of drugs as P3, an observation form as P5 and a cautioned statement as P4.

The defence was manned by the accused person who did not call witnesses, but successfully, he tendered the statements of Michael Bunyaga (Pw4) as D1, DE is the statement of D/ssgt Athuman (Pw9) and the statement of Bertha Mamuya (Pw11) as D2. The prosecution team consisted of 8 Attorneys namely Veronica Matikila, Apimaki Mabrouk, Annunciata Leopold and Chivanenda Luwongo Senior State Attorneys, Clara Chawe, Estazia Wilson, James Palangyo and Monica Matwe State Attorneys. The defence team of three lawyers was led by Mr. Jamuhuri Johnson, being assisted by Dominicus Nkwera and Miss Kalunde Kalili learned advocates.

When the case was fully heard, there were closing submissions. It is important to note here that as important as they are, submissions, highlighted key issues to consider.

For the defence, it was submitted by Mr. Jamuhuri that the prosecution has to show, that the case was proved. Proof according to him, must be beyond reasonable doubt as held in the case of **M. S. Said v. R.** (1995) TLR 3. The accused is only to raise doubt and has no duty to prove his innocence. He further submitted that, the prosecution brought witnesses to prove, that, on 11th May 2011 the accused came from Brazil through Doha to DSM, with pellets. It was Pw6 who told the court that she met him and had a passport.

He submitted, Pw17, said, he arrested him with his passport and an air ticket. But there is no evidence proving the same travelled, because neither the passport nor the ticket was tendered. According to him, exhibit P1 was tendered, it is drugs alleged defecated by the accused. There is no documentary evidence proving how the chain of custody of drugs movement from the airport to other places. In the case of **Paulo Maduka and other v. R.**, Criminal Appeal No. 110 of 2007 (CA) at Page 18, the Court of Appeal stated the need to prove the chain of custody. In this case, it has to be shown how the pellets were moved from JNIA to ADU, to the Chief Government Chemist and then to court. He asked this court to refer to the case of, **Marceline Koivogui v R.**, Criminal Appeal No. 469 of 2017

The learned counsel went on submitting that, in exhibit P1, in order to prove the accused committed the offence, the prosecution brought P5 to show 60 pellets came from the accused. According to him, P1 is 64 pellets, but there is no evidence supporting the prosecution case. There is no evidence as well from a person who said the other 4 pellets were found in his pants.

In the case of **Paulo Maduka** (supra) and **Azimio Machibya Matonge v. R** Criminal Appeal No. 35 of 2016 CA at page 14, there was need for tendering in court a seizure certificate. Pw17 was informed about the accused before arrival at JNIA and had an ample time to prepare search and seizure order, but did not. The learned advocate asked this court to refer to the case of **R.V. Mussa Hatibu Sembe**, EC Case No. 4 of 2019 at page 30 -31

When dealing with exhibit P5, he submitted, it did not prove the case, because there were witnesses who are not known. In the premises, he said, the same might have tempered with it. Other witnesses who were from immigration and TRA, cannot be, he said, called independent witnesses. They are from the Ministry of Home Affairs as the police, the learned advocate submitted. In this case, basing on the decision of the Court of Appeal which ordered this case be reheard at page 17, the retrial was ordered because of failure to sum-up to assessors and insufficiency of evidence. The prosecution was required to call the evidence to fill the gap.

He submitted, further that, Peter Maskamo did not come to testify as he did before and tendered a cautioned statement. He was warned by this court twice and did not come to testify. The accused was interrogated. The prosecution evidence is weaker than it was before a trial denovo. According to him, there is no difference between then and now. The learned advocate was of the view that the case has not been proved.

Mr. Dominicus added few remarks for the accused, he submitted that section 110 and 111 of the Evidence Act, provides that, he who alleges must prove. The prosecution had to prove by tendering the passport and so the chain of custody was not proved too. It is

from that insufficiency of evidence that the case was not proved and accused has to be acquitted, he concluded.

On part of the prosecution, Mr. James Palangyo learned State Attorney, was of the submission that the accused is charged with a single count of trafficking in drugs. The prosecution as a matter of fact has to prove that the accused was found trafficking narcotic drugs and it was proved in accordance with section 110 and 111 of Evidence Act. It was submitted that the prosecution has proved the following things; **First**, that under section 2 of the Act, it was proved by Pw11, that the drugs found with the accused were cocaine hydrochloride. **Second**, that, the prosecution has proved that it is the accused who was found with 4 pellets in his pants and 60 others were excreted by him.

According to the learned Attorney, Pw1 – Pw4, Pw5 – 11,13,14, 16 and 17 proved by direct evidence that 60 pellets were evacuated by the accused. According to him, the prosecution tendered documentary evidence such a P5 which shows how 60 pellets were excreted by the caused in their presence.

He went further and said, the prosecution brought 64 pellets, i.e 60 excreted and 4 pellets from his private parts forming exhibit P1. For him, it was proved beyond doubt that the accused committed the offence. He said, on the chain of custody, it was proved not to have been broken. As important as it is, he said, chain of custody has proved the exhibit was not tampered with.

It was submitted that Pw17 searched the accused and found 4 pellets and 60 pellets were excreted by the accused in the presence of other witnesses which constitutes proof beyond reasonable doubt. He submitted that witnesses testified and identified the exhibits here in court. According to him, they told the court how the same were given to Pw5 who kept them. Pw5 told the court how they were labeled and taken to the Chief Government Chemist, while Pw17 and Pw5 took them to Pw11 who examined them. It is Pw11 who found out that they were cocaine. Pw11, as well, told the court how the exhibit was labeled. He went on submitting that, there is evidence showing how the exhibits were

brought to court. He said, Pw5 testified how the same were kept and the way Pw1 brought them to court.

There is no seizure note on how 4 pellets were seized. It is so, he submitted that the 4 pellets were found on an emergency search and it was not possible for him to prepare the seizure note. The prosecutor further submitted that; it is not only documentation that proves chain of custody. He was vehement that, the prosecution tendered oral evidence to prove so, he asked this court to refer to the case of **Abas Kondo Gede v. R**, Criminal. Appeal No.472 of 2017 CA Page 21.

He went on submitting that because they have proved by oral evidence, chain of custody has remained intact. On credibility of the witnesses, the court was asked to follow the case of **Marceline Koivogui v R**, Criminal Appeal No. 469 of 2017 at Page 32 on chain of custody. According to him, the evidence of the prosecution was credible and the court has seen the credibility of the witnesses and should be believed.

The learned Attorney said there is not material discrepancies between the prosecution witness. In his view, the discrepancies if any, it should be held, did not go to the root of the matter. The difference may be caused by passage of time which in his view, it is difficult for witnesses to recall everything as it happened. In the case of **Deusi Josias Kilala vs R**, Criminal Appeal No. 191 of 2018, the accused is not bound to prove the case. But when the accused tells lies, his evidence corroborates the prosecution case. Mr. Palangyo submitted that the accused denied everything. His total denial, he said corroborates the prosecution as held in the case of **Nkanga D. Nkanga v. R**, Criminal Appeal No. 316 of 2013 Page 7 and 8. In conclusion it was said that the prosecution proved the case beyond reasonable doubt.

For the prosecution case, as I said, 17 witnesses were called. Due to the nature of the case, evidence will be briefly stated as hereunder; **Damari Assery Tuvana** (Pw1). She

is a court clerk. She worked at the High court, with duties to assist judges in court proceedings. She testified that when in court documents are tendered in evidence, she receives them and keeps them as exhibits. On 19.10.2015, she testified that, she was in court at High Court DSM with Judge Arufani. It was in Criminal Session No. 19 of 2015. The accused was Mwitaka Godfrey Mwandemele. He was accused of trafficking in Narcotic drugs. Then came a witness called Bertha Mamuya.

She tendered two exhibits, a government chemist report and another was a khaki envelope with 64 pellets of narcotic drugs which were admitted as P2. Other witnesses testified and tendered exhibits. An observation form was admitted as exhibit P3.

The cautioned statement was admitted as P4 and P5 was a certificate of value. She endorsed them by a court stamp and were duly signed by the judge. The documentary exhibits were kept in court, but pellets in khaki envelope which had drugs were given to Afande Neema of ADU.

She said, the court does not have strong room to keep the exhibits. They have the dispatch book where they recorded the same, it was given to Neema. It was put in the other new khaki envelope. She wrote on it, session number 19 of 2015, name of the accused Mwitaka Godfrey Mwandemele and stamped it on and endorsed it. In it, were 64 pellets as it was brought to court. The pellets were packed by her in the envelope and tied around it, a white transparent sole tape. She further, testified that pellets are like her thumb finger. She tendered them as follows; P1 which is 64 pellets and their package, P2 is a report from the Chief Government Chemist, P5, the Observation form and P3 is the Certificate of value of the drugs.

Joseph Christopher Shekiondo (Pw2). He testified that, he had the duty of valuating drugs. He did so by looking at the type of drugs, weight of drugs and price at the market. He said, in order to know type of drugs reference is made to the Chief Government Chemist report, as well as weight. Price is checked in the office database.

He testified that the same drugs in the case at hand were cocaine hydrochloride weighing 1112.0gm. the same, he said were valued at 55,660,000/= and issued a certificate of valuation. He identified it as exh. P3.

The other witness for the prosecution is **Zainabu Duwa Maulana** (Pw3). She was a ten-cell leader at Kurasini close to the officers of Ant Drugs Unit (ADU). On 15th May 2011, she was called by Commissioner Nzowa of ADU at ADU to witness parking of Narcotic drugs. It was in the presence of the accused, when the same were parked by Neema. There were other police officers. She said they were 64 pellets. Her evidence was that they were parked in a Khaki envelope and sealed it with a water seal. She identified and commented that they were changing colors from cream to brown not, as she had previously seen them in court, when she came to testify in this case, for the first time.

The other evidence was by **Michael Ladislaus Bunyaga** (Pw4). He is an Immigration officer, who worked at JNIA in 2011. On 12th May 2011, he was called from his office by police officer called Mashaka. With him, the accused and others went to the toilet at the Airport to witness the accused emit the swallowed pellets. The accused, according to him, emitted in their presence, 8 pellets. It was again done on 13th May 2011, where 7 pellets were emitted. He had also made the same on 12th May 2011 at 6.30, when 6 pellets were emitted. In total therefore he witnessed 21 pellets excreted by the accused person. The same were identified as exhibit P1

According to **SSP Neema** (Pw5), she worked as an exhibit keeper with ADU. On 11th May 2011 at about 7.00pm, she received 14 pellets from Dsgt. Athuman. She kept them as per reference number and name. On the same day as well, she got 19 pellets from Mashaka. On 13th May 2011, got another 6 from Athuman and 3 from Mashaka. On 14th May 2011, he got 7 pellets from Athuman and 2 other pellets from Mashaka.

On 15th May 2011, she testified she parked them in the envelope, sealed with a water seal with a total of 64 pellets. They were parked in an envelope khaki colored and rounded the envelope with sole tape. The accused was present, Nzowa and Zainabu Duwa. She put on the second envelope and used fire seal wrote IR number and that they were 64

pellets suspected to be narcotic drugs. They were taken to the Chief Government Chemist. The same were given a Lab No. 408/2011 before they were examined by Mamuya. It is was found that they were cocaine. Samples were taken and on confirmatory test they were identified as cocaine hydrochloride. The same were identified as P2 and P3. The accused was identified in the dock.

Salma Iddi Chaurembo (Pw6), She is an Immigration officer at Magufuli bus stand in Dar-Es Salaam. She worked at JNIA in 2011. On 11th May 2011, she testified to have attended a passenger at 2.00pm, who was from Brazil via Doha to Dar- es salaam. He had boarded Qatar Airways which had just arrived. The passenger came to her trembling and sweating and wanted a quick clearance. It was the accused Mwitaka Godfray Mwandemele. He had an ETD passport. (Emergency Travel Document issued in Brazil for a single safari.

According to her, the accused confessed in the following words "*Nina mzigo tumboni na mwingine kwenye nguo, nisaidie kutoka*". She further testified that the accused looked confused, he was sweating. She reported the matter to her boss and the accused was arrested by ADU officers at the airport.

Jefferson Deus (Pw7), he worked as an Immigration officer at JNIA in 2011. On 11th May 2011, he said, he was in his office and was called at ADU by one police officer called Mashaka. He was asked to witness the accused defecate narcotic drugs. At the ADU offices at JNIA, he met the accused, Peter-Kavishe from TRA, and another police officer called Athuman. As they were taken to the special toilet, he witnessed the accused defecating 10 pellets. He signed on an observation form. He was then discharged. He identified Exh. P1 and the accused in the dock.

Shaban Babili (Pw8), according to him, he is an immigration officer who worked at JNIA in 2011. He testified that on 11th May 2011, was on morning shift. He was called by Athuman the police officer to witness the accused emit drugs allegedly swallowed. At about 9.43 he defecated 6 pellets. Later at about 5.40, he did the same and defecated 7

pellets. He signed observation form and identified (Exh. P5), an observation form. He identified Exh. P1, the pellets and as well, identified the accused too.

F. 6059 Dssgt Athuman, (Pw9), he is a police officer who worked at ADU in 2011. On 11th 5 May 2011 was directed by commissioner Nzowa to work on the case involving the accused at JNIA. When he arrived at the Airport, he met the accused in the hands of Sargent Fidelis and DC Gabriel Magesa. At about 3.00am when on the night shift the accused wanted to go for a call. He called two independent witnesses ie. Shaban Babili an Immigration Officer and Vincent Gerald from customs department of Tanzania Revenue Authority. They went with him and the accused to the special toilet where they witnessed the accused evacuated 6 pellets. Again at 5.00am, he emitted 7 pellets in their presence. On 12th May 2011, at 8.00am he took 13 pellets of drugs to Neema, the exhibits keeper at ADU. He then went away on that day.

As he came in the evening shift, at about 10.45pm, Amir Ally of Immigration and George Ndunguru of TRA, were called as independent witnesses. They witnessed the accused defecate again 6 pellets. The same were also taken to Neema at 8.00am as he was leaving the office. Again, on the same day, 12th May 2011, in the evening at 4.00pm in the presence of Michael Bunyaga other 7 pellets were emitted. He gave the same to Neema for custody. In all cases he testified, all witnesses were signing in observation form so was the accused. He identified exh. P1, P5 and the accused.

Amir Ally Abasi (Pw10), he is an Immigration officer. On 2011, he worked at JNIA. He testified that on 12th May 2011, he witnessed upon being called by one Athuman Police Officer 6 pellets emitted from the accused. He was in the company of Ndunguru from TRA, the accused and Athuman a police officer. He identified exh. P1, P5 and the accused. He told the court that upon witnessing defecation of the pellets, the accused, independent witnesses and the police officer signed the observation form.

Bertha Mamuya (Pw11), is another witness for the prosecution. She is the Government Chemist and worked in 2011 at the Chief Government Chemist laboratory. At the CGC, she headed the forensic science unit. On 16th June 2011, she testified, she received exhibits from ADU which were assigned Lab. No. 408/2011. They were brought by Neema and her fellow police officers for examination and analysis.

They were 64 pellets packed in the khaki envelope. She conducted preliminary test and found they were cocaine. The same weighed 1112.0gms or 1.112kgs. Later, she confirmed were cocaine hydrochloride on confirmatory test. She prepared a report and sent it to ADU which she identified as exh. P2. She also identified pellets exh. P1.

Ernest John Lukaza (Pw12), was an Immigration officer at JNIA in 2011. On 13th May 2011, went to his office in the morning shift. At about 1.15pm, was directed to accompany DC Mashaka a police officer at ADU office at JNIA. According to his evidence, he witnessed the accused defecate 3 pellets of narcotic drugs. It was in the presence of Mashaka and Shaban. They signed an observation form exhibit P5, the same was identified as well as P1.

The prosecution also tendered one **Lunganyi Chongo** (Pw13), an Immigration officer. He told this court that he worked at JNIA in 2011. On 14th May 2011, he testified that he was called by a policeman called Mashaka. He was called at their offices at the airport. He told this court that he witnessed together with Chacha from TRA, Mashaka and another police officer, the accused evacuate 2 pellets.

He said, the same was done in the toilet specially made for that purpose at the airport. The same were kept by Mashaka as they signed in the observation form. He identified the observation form, P5 and as well as the pellets- exhibit P1.

Ramadhan Msoba (Pw14), he told this court that he works with TRA customs department. He said in 2011 worked at JNIA. According to him, on 12th May 2011 at about 11.20am, when in his normal duties, he got a call from one Jafari, a policeman from ADU-JNIA. He was to witness the accused who was under observation. He met the accused and other officers. They were led to the toilet where they witnessed the

defecation of pellets. In that transaction he witnessed defecation of 5 pellets. It was done in the special toilet present at JNIA. Later, in the evening, he witnessed in the presence of Bunyaga and Magesa emission of other 6 pellets by the accused. He identified the accused, as well, he identified the observation form, P5, which he signed as they witnessed. Exhibit P1 was also identified to be the pellets he witnessed.

For Assistant Inspector **Jafary** (Pw15) of the police force at ADU, on 12th May 2011, he was with Sgt. Mashaka and DC Gabriel Magesa. At about 11.20am, he was with Ramadhan Msoba from TRA and Wakule Ikumba of Immigration as independent witnesses. He said, he witnessed the accused excrete 5 pellets. They recorded the same in an observation form. The same also happened at about 2.30pm. This time, there was Peter Kavishe from TRA and Michael Bunyaga from Immigration as independent witnesses. The accused evacuated in the special toilet 8 pellets.

He identified the same among exhibit P1. In the same way, he identified exhibit P5, an observation form as well as the accused in the dock.

Further, the prosecution brought **F. 7147 Cpl. Emmanuel** (Pw16). He worked with Ant Drugs Unit as the police officer. On 11th May 2011, he was in the evening shift at JNIA which was his work station. The evening shift started at 6.00pm. He arrived in the office and found DC Gabriel, Fidelis and Sgt. Mashaka. He was with Cpl. Athuman. They started their duty and at about 9.30pm the accused evacuated 6 pellets. It happened in the presences of Shaban Babili of Immigration, Vincent Gerald from TRA and Sgt. Athuman. Again at 5.45 am in the presence of the same people as before, he emitted 7 pellets.

On 12th May 2011, he also came on duty with Sgt. Athuman and witnessed evacuation of 6 pellets at about 10.30pm in the presence of Athuman, Amir Ally and, George Ndunguru.

He again came on 13th May 2011 in a night shift at about 10.45pm, with Michael Buyanga and Msuya and Athuman, where 7 pellets were emitted by the accused. A record was made in the observation form.

The last prosecution witness for the prosecution is **D. 7262 D/SSGT Mashaka** (Pw17). He too is the police officer, but now retired. He worked with police at ADU in 2011 at JNIA. On 11th May 2011, went to the office for normal duties. As he arrived, he was directed by Nzowa to go to the airport to deal with a suspect who was from Brazil with narcotic drugs.

When Qatar airway landed, among the passengers from Brazil who held an ETD was one Mwiteka Godfrey Mwandemele.

As he was preparing to leave the lounge, he arrested him. He had carried in his sexual organs (via vya uzazi) narcotic drugs. He was searched at ADU offices and found 4 pellets hidden in his pants. It was done according to him, in the presence of DC Gabriel and from other departments who were informed about it.

From 11th May 2011, the accused was under arrested. At about 5.20pm in the presence of Peter Kavishe, Jefferson and others, the accused emitted other 10 pellets in the special toilet. On 12th May 2011, he took the accused for interrogation from JNIA to ADU officers at Kilwa road. On that day at about 11.15am, the accused emitted 5 pellets. Among other persons who were present included, Msoba Ramadhan who witnessed later at 2.15pm, 8 pellets being emitted, others were Peter Kavishe and Michael Buyanga. At about 5.30pm again 6 pellets were emitted witnessed by Bunyaga and Msoba.

He went on saying, on 13th May 2011 at about 1.20pm, the accused emitted 3 pellets. He again did the same on 14th May 2011 at about 4.15pm, 2 pellets were evaluated. On 15th May 2011 at about 10.00am, he took the accused again to ADU –Kilwa road as he was directed by Nzowa. According to him all exhibits were given to Neema every day when he finished his shift.

On 16th June, 2011, with DC Jafary, he escorted Neema with exhibits to CGC for examination. He testified and saw 64 pellets which he identified as P1 and an observation form as P5 which alleged used to record emitted pellets.

On the Defence case, the accused made a total denial of commission of the offence. His story is clear and states that, on 11th May 2011, at about 10.00am, he was from home to the bus stand at Segerea. Police officers, among them was Fidelis and Gabriel stopped him and told him he was associated with drug lords. They arrested him and took him to JNIA for interrogation.

On the directive of Nzowa, he said, they took him to the ADU offices at Kilwa road, where he met Nzowa. He was interrogated by him on the same issues, which he denied. He was shown 2 pictures of drug lords of the Asian origin who he said is in association and import drugs to Tanzania. He was asked to cooperate, otherwise will be given a case to take him to jail for many years.

At about 1.00pm on same day, he said, he was taken to the central police station and remanded until on 16th May 2011. Dc Gabriel and DC Fidelis among other came and asked him to cooperate. Because he had nothing to offer, he was taken to Kisumu RM's court and then arraigned of these charges. He was remand with no bail. He denied to have ever travelled to Brazil and asked for an acquittal since he never even saw an observation form as alleged by the prosecution.

Having shown although in brief the submissions of the parties and the summary of evidence presented, I have to now deal with the question whether, the case has been proved or not. In drugs cases like this one, it is important in my view for prosecution to prove two key things.

First, whether the accused was arrested with drugs and **Second**, whether the chain of custody was not broken.

To begin with the first point, I have to say that the prosecution evidence on this is mannered by Pw6, the immigration officer, Pw9, Pw15, Pw16 and Pw17 who are police officers. Pw17 is said to have arrested the accused person. He said he arrested him at JNIA on 11th May 2011. He said, the accused was coming from Brazil and had boarded Qatar Air Ways. On the arresting dating, Pw6 confirmed so. She said, she saw her confused and was trembling. When the accused was interrogated by her, he admitted to

have been coming from Brazil but had ingested narcotic drugs. He was reported to the police officers at ADU who arrested him. Pw6 however, did not clearly say or point out who arrested the accused person. But because Pw17 says he arrested him, it goes without saying therefore that he was arrested by him perhaps on assistance of the Pw6.

There is no clear explanation as to how the same was arrested. P17 himself says, he arrested him when he was about to leave the lounge. But Pw6 says, other hand, he was arrested when he was processing his passport before he was cleared out. I therefore agree with the defence that evidence of the prosecution especially between Pw6 and Pw17 contradicted on the manner the accused was arrested.

In my examination of other evidence on this aspect, the accused also admits to have been arrested on 11th May 2011. He said was arrested at Segera by DC Fidelis and DC Gabriel the police officers. It is true also that, the same took him to JNIA for interrogation. Pw16, was clear that he found the accused at the JNIA on the same date as they went on duty in the evening. He found him with DC Fidelis and DC Gabriel. Pw9 has the same story and was with Pw16. I am therefore convinced that the accused was arrested on 11th May 2011.

There is no reason therefore to believe that Pw6 told lies. There is also no reason to say or suggest that, the prosecution witnesses on this material aspect although, they differ in the manner in which he was arrested, this could affect the substance of their evidence. He was therefore arrested at the airport in the manner Pw6 told the court.

Akin to their evidence, there is evidence of Pw4, Pw7, Pw8, Pw10, Pw12, Pw13, and Pw14. These are officer from Immigration and TRA who also witnessed in between 11th to 14th May, the accused excrete pellets. In total they witnessed 60 pellets. These, I may hold are independent witnesses as opposed to Pw9, Pw15, Pw16 and Pw17, the police officers who worked with ADU at JNIA. These, also alleged held the accused under observation for that period of suspicion.

In exhibit P5 which is an observation form, it shows there are signatures of the accused on 11th May when pellets were excreted at 17.40, 21.43 and 23.54, pellets were 10, 6

and 7 respectively and the same were witnessed by Pw7, Pw8 and Vincent Gerald. On 12th at 4 different time, pellets 5,8,6 and 6 respectively were excreted in the presence of Pw14, Pw10, Pw4 Samson Senye and Peter Kavishe. On 13th May, 3 and 7 pellets were witnessed by Pw12 and Pw4, while on 14th May 2 pellets were witnessed by Pw13, and Pw14 among others.

In all cases, there appears a signature of the accused. The accused did not dispute his signatures appearing on the same exhibit.

In my considered view, the accused was arrested as alleged and the pellets, exhibit P5 were excreted by him at the JNIA in between 11th and 14 May 2011.

The second point to determine is whether the same were narcotic drugs. Here the evidence of Pw11 is that, she received pellets from Pw5. He did examination. It was first found upon preliminary test that the same were cocaine. She then made a confirmatory test that proved they were cocaine hydrochloride. She prepared a report which is exh P1. The same went further to say, the same weighed 1112 gms. The report was verified by acting Chief government Chemist. It is duly stamped and signed by the maker and so approved. It also says, they examined 64 pellets brought to her by Pw5, who was with Pw17 and Pw15. The report further says that the same were brought to her for examination on 16th June 2011. The statement of Pw11 is clear in the aspect that it is aligned with the evidence of Pw5 and Pw15 in terms of the dates when pellets were taken to her.

But according to Pw3, 64 pellets were parked by Pw5 in offices of ADU at Kurasini on 15th May 2011. They were cream coloured and were parked in the khaki envelope. The description of the pellets are the same as explained by Pw11, Pw5 and other prosecution witnesses. It is therefore clear to me that based on the expertise and experience that Pw11 has and the fact that she examined and analysed the drugs. The same are narcotic drugs called cocaine hydrochloride.

Since the same are among the same as define by section 2 of Cap 95. And because the same were found with the accused person. It has been proved that the prosecution has

not only proved that the same were drugs but also the handling of the same kept its integrity.

I am saying so because, Pw5 received the same from Pw9 and other police officers. She kept them in the office strong room which according to her she has two keys and she is the only one who keeps and gets control of such exhibits. She parked them in the presence of Pw3. She took them for examination to Pw11 who also gave them to her and again upon examination. She brought them to court and were received as evidence. They were dealt with by Pw1 a court clerk when the first trial of this case was conducted. She handed them to her when the case was on. She kept them until they were brought to court for the second time. To me this clear that the chain of custody was not broken.

Having ruled so, can it be said, the case was proved beyond reasonable doubt. Answering this question, the assessors when the case was summed up to them, they were of the unanimous opinion that the case was proved and the accused be convicted. I buy their opinion and advise, that the same has been proved. The accused is therefore convicted of the offence charged, which is trafficking in narcotic drugs contrary to section 16(1)(b)(i) of the Drugs and Prevention of Illicit Traffic in Drugs Act, [Cap 95 R.E 2002].

AK. Rwizile
Judge
23.06. 2021



Recoverable Signature

X

Signed by: A.K.RWIZILE

