

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**CRIMINAL SESSION CASE NO. 155 OF 2015**

**REPUBLIC**

***VERSUS***

**MARY MVULA**

***Date of Last Order: 24/09/2021***

***Date of Judgment: 08/10/2021***

**J U D G M E N T**

The accused person herein **MARY MVULA** is a Zambian Citizen, with **Passport No. ZN 190899** issued on the **22<sup>nd</sup> October, 2010**.

The facts of this case reveals that on the **2<sup>nd</sup> day of May, 2012**, the accused was arrested at Julius Nyerere International Airport (Henceforth "**JNIA**") upon arrival from Pakistan via Dubai and Addis Ababa aboard Ethiopian Airline **ET 601**. The accused was suspected of carrying Narcotic Drugs in her stomach. She was taken into custody for interrogation and further observation at Anti-Drug Unit Offices (herein to be referred as **ADU**) at JNIA.

Later, the accused was arraigned in court for two counts. **The first count** being 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]** as amended by **Written Laws (Miscellaneous Amendment) (No. 2) Act No. 6 of 2012** (Henceforth "**the Act**"). Particulars accompanying this count is that the accused on the **2<sup>nd</sup> of May, 2012** at JNIA area within Ilala District in the City and Region of Dar es Salaam, did Traffic in Narcotic Drugs namely, **COCAINE HYDROCHLORIDE** weighing **287.64 grams** valued at **Tanzania Shillings Fourteen Million Three Hundred Eighty Two Thousand Only (Tshs. 14,382,000/=)**.

**The second count** being 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]** as amended by **Written Laws (Miscellaneous Amendment) (No.2) Act No.6 of 2012**. Particulars accompanying this count is that the accused on the **2<sup>nd</sup> of May, 2012** at JNIA area within Ilala District in the City and Region of Dar es Salaam did Traffic in Narcotic Drugs namely, **HEROIN HYDROCHLORIDE** weighing **104.05 grams** valued at **Tanzania Shillings Four Million Six Hundred Eighty two Thousand Two Hundred and Fifty Only (Tshs. 4,682,250/=)** Only.

Basing on the facts narrated above and the collected evidence the information for Trafficking in Narcotic Drugs was filed against the accused for the offence she stands charged.

The accused person refuted the accusations following which the matter was taken to trial. At the preliminary hearing stage, according to the records, the accused person dispute each and every prosecution detail that was advanced before the court. That being so, the matter was then scheduled for trial.

Upon answering to the offence charged on Trafficking in Narcotic Drugs, contrary to section **16(1) (b) (i)** of the **Drugs and Prevention of Illicit Traffic in Drugs Act**, the accused person pleaded **not guilty** to the said offences. Subsequently, during the trial, **Ms. Cecilia Mkonongo**, the learned Senior State Attorney, led the Prosecution side and was assisted by **Ms. Clara Chalwe** the learned Senior State Attorney. The Defence side was represented by **Mr. Frank Killian**, the learned Advocate.

To prove the charge against the accused person, the Prosecution summoned **ten (10) Witnesses** and tendered six **(6) Exhibits** to prove their case. On the other hand, Defence had **two Witnesses**, the accused herself Ms. Mary Mvula who

testified as DW1 and tendered six **(6) Exhibits** while the second Defence witness who testified as DW2 tendered **one Exhibit**.

At the closure of both Prosecution and Defense cases the court opened its case where **three (3) court's witnesses** testified before the court.

As it is a duty of the Prosecution to prove their case against the accused person, let me start by exploring the Prosecution version which is made by ten Prosecution witnesses and the admitted exhibits before the court in that respect.

It is the Prosecution's case that on **2<sup>nd</sup> May 2012** while at work at JNIA, **PW10 WP 5459 Coplo Valentine** working as Police Officer at the Airport, received some information from the informer that in the Ethiopian Airline that was to land at 13:30 Hours, there is a passenger by the name of **MARY MVULA** a Zambian National holding a Zambian Passport arriving from Pakistan via Dubai, trafficking illicit drugs by swallowing the pellets whose contents are suspected to be narcotic drugs. It is after the said plane had landed at JNIA, **PW 10** in company of **PW3 Inspector Brown** and **Det. Coplo Ingribert** confronted the accused person asking of her whereabouts and especially particulars of her trip from Pakistan. Since they had a hint about her suspicion on drug trafficking, PW10 arrested her and took her

for further interrogation at the Anti-Drug Unit offices located at JNIA. When inquired about the drug trafficking via swallowed pellets, the accused denied the allegations praying for release as she was tired and also pregnant. Despite of her refusal, the accused was kept under observation.

Later, **PW9 ASP Monica Mwanache** also an officer from ADU was sent for further interrogations with the accused. During interrogation, the accused insisted that she had not swallowed pellets but she is pregnant showing her ultrasound print. Due to that fact, PW9 was ordered by the head of the Anti-Drug Unit by then, Commander Nzowa to take the accused to Muhimbili National Hospital (MNH) for further examination particularly on the pregnancy allegation.

At the MNH, PW9 informed the doctor who was attending the accused that the same is suspected in trafficking illicit drugs via her stomach and she has also alleged to be pregnant. It is after the preliminary examination that indeed the accused was detected to have pregnancy of about five months. However, after consultation with the 3<sup>rd</sup> Doctor on call Professor Kidanto, the Doctor who attended the accused who was second in call Dr. Lilian Mnagwiru was directed to admit the accused until the next day for further examination. Whereas on the next day, the

accused was ordered to have ultrasound and the results showed that she was pregnant of 21 weeks and there was nothing abnormal neither any foreign body seen in the accused's abdomen. It is from those results, the accused was discharged on 3<sup>rd</sup> of May 2012 and handed over to PW9 who took her back to JNIA for further observation.

While under three days observation at JNIA and in the custody of Police Officers of the Anti-Drugs Unit, the accused person was able to defecate a total of 49 pellets being witnessed by the ADU officers and independent witnesses from other Independent Government Institutions being Immigration Department and Tanzania Revenue Authority (TRA).

On the 5<sup>th</sup> May 2012 at 02:09 hours, the accused is said to have defecated a number of **33 pellets** in the special toilet located at JNIA. The defecation process was witnessed by **PW9, ASP Monica Mwanache**, a Police Officer; **PW5 Ms. Stella Badi** from the Immigration Department as an independent witness.

Again on the 5<sup>th</sup> May 2012, at 09:50 hours the accused is said to have defecated **16 pellets** being witnessed by **PW 10 WP 5459 Det. Coplo Valentine** and a Police Officer at ADU and **PW4 Ziara Mfinanga** an independent witness from Immigration

Department at JNIA. Making a total of **49 pellets** defecated by the accused. The same were under the ADU officer's custody at JNIA before being transferred to the ADU Headquarters for safe keeping. While at ADU offices, all the witnesses mentioned above and who witnessed the accused defecating the said pellets were required to write their names and sign in the Observation Form duly prepared by **PW 3 Inspector Brown**. The said Observation Form was admitted for evidence as **Exh. P6** respectively.

The above mentioned witnesses being **PW4 Ms. Ziara Mfinanga, PW5 Ms. Stella Badi, PW9 ASP Monica Mwanache and PW10 5459 Det. Coplo Valentine** were called before the court and testified to have witnessed the accused defecating the pellets suspected to contain illicit drugs in that respect and recognized the accused before the court that she was the one whom was witnessed to defecate the said pellets. Further, these witnesses also recognized before the court Observation Form, **Exh. P6** and the pellets **Exh. P2** that they were the same that they saw the accused defecating.

The Prosecution case further reveals that the said 49 pellets were transferred twice to the ADU Headquarters where on 5<sup>th</sup> May 2012 during early morning hours, **ASP Monica Mwanache** stated to have taken the 33 pellets and handed them to **PW6 SSP Neema Mwakageni** the ADU Exhibit Keeper who

acknowledged receipt of the same through the occurrence book where both officers signed respectively before the pellets were kept at the exhibit room. In the morning of the same date, around 10:00 hours **PW7 SP Sylvester Clement Siame** the ADU Police Officer was sent by Commander Nzowa to JNIA ADU offices to collect the remaining 16 pellets. The later left ADU Headquarters to JNIA in company of the driver and escort of Emmanuel ADU Police Officer. At NJIA PW7 in the presence of PW10, and DW1, the accused herself was handed the 16 remaining pellets by PW3 Inspector Brown where the same was taken to **PW6 SSP Neema Mwakageni** the Exhibit Keeper who also acknowledged receipt of the same through occurrence book.

On 6<sup>th</sup> May 2012 during afternoon hours, PW9 after her working shift at ADU JNIA, took some other exhibits being the accused passport, accused's air ticket, accused's cell phone make Q Mobile together with the Observation Form in favor of the accused and the same were handled to **PW6 SSP Neema Mwakageni** at ADU Headquarters through dispatch for safe keeping.

On the 6<sup>th</sup> May 2012, afternoon hours, **ASP Neema (PW6)** the exhibit keeper in the presence of **SACP Nzowa, PW9 Monica Mwanache, PW8 one Zainabu Dua Maulana** an



independent witness who is also a ten cell leader at the ADU locality at Kurasini, DW1 the accused and other ADU Officers were engaged in the exercise of packing and sealing 49 pellets suspected to be of narcotic drugs into a big sheet of khaki paper and finally to the envelope ready to be taken to the Chief Government Chemist Office (Henceforth "**CGC**") for chemical analysis. The said consignment which was recounted and confirmed to be 49 pellets was sealed and labeled **Police Case File Number KLR/IR/1522/2012** where the above witnesses wrote their names and signed on the said envelope, the accused inclusive. Thereafter, SSP Neema (PW6) returned the same to exhibit room for custody.

On the 7<sup>th</sup> May 2012, the sealed envelope with 49 pellets were taken to the CGC for chemical analysis. The same was in the care of PW6 in the company of PW9, PW10 and Det. Coplo Emmanuel. At the CGC reception, the suspected pellets were assigned a Laboratory **No. 294/2012** and were physically handed over by ASP Neema to **PW1 Mr. Ziliwa Peter Machibya**, a Government Chemist Grade II. PW1 after satisfying himself with the letter accompanying the consignment then opened the envelope and began the preliminary tests including weighing of the substances at hand. The preliminary test results were 13 pellets among the 49 contained **HEROIN**

**HYDROCHLORIDE** weighing **104.05 grams** while the 36 remaining pellets contained **COCAINE HYDROCHLORIDE** weighing **287.64 grams**. It is after that experiment, PW1 took a bit of samples from the pellets for further laboratory experiment and handed over the 49 pellets to PW6 who was throughout at the laboratory in the company PW9, PW10 and Det. Coplo Emmanuel and returned to ADU where the said exhibit was kept for custody.

The Prosecution case further reveals that, PW1 later conducted the confirmatory test on the samples he took where the report to the same was prepared and admitted in court as **Exh. P1**. Reading and explaining the contents of the said report (Exh. P1) on 49 pellets (Exh. P2) before the court, PW1 a Government Chemist confirmed that the 13 pellets suspected to be narcotic drugs were examined and confirmed to be narcotic drugs known as **HEROIN HYDROCHLORIDE** or **Diacetylmorphine Hydrochloride** weighing **104.05 grams**. It was further stated that these drugs have serious consequences of leading to drug dependence to the user which ultimately creates central nervous system disorder which destroys the user's state of mind. The Report further revealed that the said drugs are under Part I of the poison list. Further the remaining 36 pellets were confirmed to be **COCAINE HYDROCHLORIDE** or

**Diacetylmorphine Hydrochloride** weighing **287.64 grams**.

Likewise the same is said to have serious consequences of leading to drug dependence to the user which ultimately creates central nervous system disorder which also destroys the user's state of mind.

On 12<sup>th</sup> October 2012 ADU through the contents of Exh. P1 (the Report from CGC), prepared a letter to Commissioner for the National Coordination of Drug Control Commission requesting the Commission to estimate the value of the said confirmed narcotic drugs. Prosecution through is witness PW2 the Retired Commissioner for the National Coordination of Drug Control Commission by then Mr. Christopher Joseph Shekiondo conducted a valuation based upon the disclosed weight of the seized narcotic drugs in terms of section **27(1)(b) of the Drugs Act**. Accordingly, the drugs which were confirmed to be **HEROIN HYDROCHLORIDE** or **Diacetylmorphine Hydrochloride** weighing **104.05 grams** were valued at a sum of **Tshs. 4,682,200.50** only; while confirmed **COCAINE HYDROCHLORIDE** weighing **287.64 grams** were valued at **Tshs. 14,382,000.00** only. The **Certificate of Value of Narcotic Drug and Psychotropic Substances** dated 12<sup>th</sup> October 2012 duly signed by PW2 in respect of 49 pellets was

tendered for admission by PW2 and admitted for evidence as **Exh. P 3** respectively.

That concludes the narration of the Prosecution evidence in proving their case during trial.

At the closure of the Prosecution case, it was the court's firm view that Prosecution had established the ***prima facie*** case against the accused Mary Mvula for her to defend herself. It is from there, the accused chose to defend herself upon sworn testimony where she testified as **DW1**.

In the cause of testifying, the accused identified herself as **MARY MVULA**, a house maid with standard three education and a resident of Lusaka Zambia. DW1 with the desire to obtain a higher salary, decided to visit Agents dealing with offices cleaning in Lusaka seeking for a better job with the higher salary. The Agency having DW1's contacts contacted her and informed her that a job has been secured in Pakistan. Without enquiring further on particulars of the working environment and salary, DW1 decided to arrange a self-sponsored journey to Pakistan via South Africa for the employment offered.

Arriving at Pakistan, at the airport she met her host, one Mr. Hussein who took her to his residence. There she was introduced

to a lady whom she didn't mention her name. DW1 informed the court that at the house, the lady took her passport and informed her that the same will be handed over to her the day she departs to her home.

DW1 further revealed that the tenure to her employment was two years and that she will have annual leave after one year. Further, the accused revealed that she was to be paid monthly salary to the tune of **2,000 Rupees** of which when cross examined confessed not to have knowledge as to which salary is higher by comparing to the **2,000 Rupees** she was paid at Pakistan to the **2,000 Kwachas** that she used to be paid at Lusaka for the same job as a house maid.

It is the DW1's assertion that after the lapse of 11 months, she requested for annual leave and informed that she will be paid six month's salary and the rest will be paid when she resume her duties from leave. On that promise, she left to Zambia via Tanzania. It was after one month's period, DW1 testified to return to Pakistan via South Africa as promised. However, after she resumed her work, with five months pregnancy, she didn't stay long as she couldn't get along with his Employer as a result of unpaid salaries. Further as her Employer detected the fact that she was pregnant, she advised her to quit the job as it will be

expensive for her to bear and nurture the child in Pakistan. As a result of all that, DW1 decided to quit the employment and finally returned to Zambia via Dubai and Dar es Salaam -Tanzania.

DW1 confessed to meet Inspector Brown PW3 and WP Valentine PW10 who requested her passport and after they had the same, those two Officers informed her that she was suspected to be trafficking narcotic drugs through her body as a result of information received from their informer from Pakistan. DW1 informed the court that she was held for further search and interrogation where she didn't resist. DW1 further testified that later PW3 Inspector Brown left the office she was taken to and later returned with the white paper where she was required to write her particulars of which she did. Upon referring to **Exh. P6**, the Observation Form, DW1 confessed to be the paper she mentioned that was brought by Inspector Brown where she confessed to have written her names on the 4<sup>th</sup> column and denied all other particulars as she claimed were not in place when she wrote her name on the same.

DW1 informed the court that on the evening of the same day, PW3 Inspector Brown handed her over to PW9 Monica Mwanache, the Police officer who took her to Muhimbili National Hospital. There she was received and attended by DW2 who

examined her and detected that she was pregnant. Further that the Doctor was informed by PW9 that she was suspected to have illicit drugs in her stomach.

DW1 testified that she was admitted for further investigation where on the next day the said doctor who attended her the previous day prescribed medicine that was to facilitate her taking out whatever she had in her body through defecation. The witness confirmed that the said medicine was administered to her and as a result she was subjected to serious diarrhea. However, nothing like narcotic drugs pellets came out of the same. As a result, the witness was taken to Ultrasound examination where the doctor is said to inform PW9 that the results of the same was that DW1 was not found with anything especially what they suspected from her.

DW1 reveals that on the same day around 15:00 Hours, the doctor re-administered to her the previous medication where the results were the same. After all that the witness informed the court that she was discharged and the doctor directed PW9 to release her as she has been cleared of suspicion so as she can board a bus to her home at Lusaka. To prove that she was received, examined, attended and discharged at the MNH, the witness tendered for evidence the request letter which was

written by her Advocates (Kariwa and Company Advocates) requesting the accused's Medical Report in that respect. The same was admitted for evidence as **Exhibit D1** respectively.

It is the DW1's testimony that instead of being released as directed by the doctor after she has been discharged, she was brought to Police Post where she was held for three days before she was arraigned to Kisumu Resident Magistrate's Court where the charge of Trafficking Illicit Drugs was read to her and later brought to Segerea remand prison.

To prove that the accused was really pregnant and that she gave birth while in remand prison, the witness rendered for evidence several documents and the same were admitted for evidence. Those documents are: **Exhibit D2** being accused's daughter photographs, **Exhibit D3** the accused's clinic card and the child's birth notice. Others are **Exhibit D4**, English Exam in favor the accused's daughter by the name of **Chidima Somadina Sliyakus**, **Exhibit D5** the child's birth certificate and **Exhibit D6** being the child's handing over letter from the accused to her Sister residing at Lusaka Zambia the one who is taking care of the child currently.

Concluding her testimony before the court, the witness denied the knowledge of Exhibit P2 (49 pellets) alleged to have



been defecated by her at the JNIA as testified by Prosecution witnesses. Explaining more on this fact, she states to have seen the pellets for the first time in 2019 when the Government Chemist who appeared as PW1 tendering the same as exhibit before the court. Further, she has never been involved in any way in obtaining the said exhibit.

**DW2** was **Dr. Lilian Mnagwiru**, the Gynecologist working with Muhimbili National Hospital. This witness testified to the effect that on 2<sup>nd</sup> May 2012, from Emergency Department she received the accused who was under police custody labeled on suspicion of trafficking illicit drugs using her stomach. And later she registered her at the Gynecology Department where she was the doctor incharge for that particular shift. It is after she had heard from the accused her medical history, she attended the accused and conducted preliminary physical examination on her. It is DW2's testimony that the preliminary examination revealed that the accused was pregnant. Later on that day the witness confirmed to have admitted the accused and consulted her supervisor on further treatment to the patient as she was suspected of having drugs in her stomach. The witness further revealed that on 3<sup>rd</sup> May 2012, the accused was taken for ultrasound examination to detect if there was anything wrong and to clear the suspicion on her. That later, the results of the

ultrasound disclosed that the accused was 21 weeks pregnant and that she had nothing suspicious. It is from those results, the witness informed the court that she discharged the patient and handed her to the police who escorted her.

In conclusion and in the cause of her testimony and to assure the court that she is the one attended the accused before the court, DW2 identified Ms. Mary Mvula, the accused before the court and also tendered a Medical Report from MNH that the accused was attended thereto. The same was admitted for evidence as **Exhibit D7** respectively.

It is after DW2's testimony Mr. Killian for the Defense prayed to close Defense case and respectively the same was closed accordingly. However, the court decided to open its case so as other necessary witnesses according to the court be called to testify. These were the **CW1, Dr. Praxeda Ogweyo** the author of Exhibit D7, **CW2 Professor Kidanto** who was DW2's supervisor and **CW3 Dr. Hatibu Changale (Radiologist)** who performed the accused's Ultrasound. The purpose being to satisfy both Prosecution and Defence together with the court on the contents of **Exhibit D7**, the accused's Medical Report from MNH.

**Dr. Praxeda Ogweyo CW1** testified to the effect that she is the Director of Clinical Support Services, Laboratory and

Pathology and Mortuary. As the Director of the said Departments, she has a duty to receive and reply to various letters concerning the matters related to the said Departments. The witness informed the court that on the 3<sup>rd</sup> September 2021, she received a court cases file containing a letter from Kariwa and Company Advocates which requested for a Medical Report of one Mary Mvula who was treated at MNH on 2<sup>nd</sup> May 2012. She stressed the patient's file number and the same was **No. A664522** which was obtained at Medical Record's Department.

CW1 admitted to have written a Medical Report in favor of the said patient following the request from Kariwa and Company Advocates through the letter dated 10<sup>th</sup> September 2021. Reading the contents of the said Report before the court, the witness confirmed that the patient in issue Ms. Mary Mvula was received at MNH on 2<sup>nd</sup> May 2012 and attended by Dr. Lilian Mnagwiru who was under the supervision of Professor Kidanto. Further that the patient was examined through ultrasound by Dr. Hatibu Changale on 3<sup>rd</sup> May 2012 where the results to the same revealed that the patient was 21 weeks pregnant and no other anomalies that were detected.

**CW2 Processor Kidanto** a Gynecologist and a Dean at the Agakhan Medical College testified before the court that when the

accused was attended at his Department on 2<sup>nd</sup> May 2012, he was 3<sup>rd</sup> in call Doctor while Dr. Lilian Mnagwiru who attended the same was the 2<sup>nd</sup> in call Doctor. The witness confessed not to have seen the patient but he was only consulted through telephone and he advised accordingly that from the patient's condition that ultrasound be conducted. The witness further revealed that he was informed that the results revealed that the patient was pregnant and that she had no any foreign items in her stomach. However, due to the fact that she was suspected of carrying drugs in her stomach, he advised that the patient be administered ***laxetic preforex*** so that she can release anything that she had. However, the result was negative. It is from those results, the witness confirmed to have advised that the patient be discharged accordingly.

**CW3 Dr. Hatibu Changale a Radiologist** confirmed that he is the one conducted ultrasound to the patient with the name of Mary Mvula on 3<sup>rd</sup> May 2012 after the request from Dr. Lilian Mnagwiru on abdomen and pelvic ultrasound. The witness testified to the effect that after he conducted the ultrasound to the patient, he found DW1 with 21 weeks pregnancy. However, in attempting to examine the pelvic as requested by DW2, his examination was barred by a foetus which was observed to be of 21 weeks old. According to CW 3, from the existence of the

foetus it was not easy to observe the requested pelvic examination since the ultra sound works in a way that when it is blocked by obstacle such as pregnancy, the sound does not go far so as to portray an image where the sound does not reach. Therefore, the requested test by DW 2 was not fruitful as the result of the existing foetus. That means he could not observe what was behind the pregnancy since behind the pregnancy is the colon.

Since CW3 was the last court's witness, the court's case was closed and paved the way to the Counsel's final submissions. Ms. Clara Chalwe submitting for the Prosecution case was of the assessment and confirmation that Prosecution has proved its case beyond reasonable doubt against the accused person. In their submission, Prosecution were able to reveal that it was the accused who was arrested at JNIA as a suspect of drug trafficking. Further to that, out of that suspicion, the accused while under observation indeed defecated the total of 49 pellets being witnessed by police officers and independent witnesses. Further, the said pellets were confirmed after preliminary test and later by confirmation test conducted at the Chief Government Chemist Laboratory that they contained narcotic drugs namely **Heroin Hydrochloride** and **Cocaine Hydrochloride** hence charged with offences of Trafficking in Narcotic Drugs.

On the other hand Defense denied the fact that Prosecution have proved the case against the accused to command conviction of the offences charged. The Defense pointed out some factors that shows failure on the part of the Prosecution to prove their case such as contradictory testimonies among the Prosecution witnesses. Further, is the Prosecution failure to identify which among the 49 pellets were related to the first count and which among them were related to the second count. Pointing to the Prosecution case weak points, Defense Counsel challenged the chain of custody of the 49 pellets alleged to come out of the accused body as from JNIA to the ADU Headquarters to the CGC without the accused's presence.

As a legal requirement in trials like the one at hand, I was assisted by two ladies Assessors **Ms. Mwadawa Selemani** and **Ms. Janeveller Lema** and the gentleman Assessor **Mr. Hassani Juma**. In giving their opinion after hearing the case before us individually, all of the three Assessors were of the same opinion that they were satisfied that the Prosecution before the court have managed to prove the case against the accused via their 10 witnesses together with six exhibits which were tendered and admitted for evidence. In the event therefore, they were of the settled opinion that the accused Mary Mvula is guilty of Trafficking in Narcotic Drugs as charged.

As I am about to determine the case before this court, I have to declare that I have with keen attention, sensibly and significantly considered the evidence adduced by Prosecution's, Defense's and Court's witnesses, and to a great extent the reasoned final submission of learned Counsel from both Prosecution and Defence.

In determining the case at hand, and to start with, as the matter before the court depends much on evidence, I do appreciate the parameters of the burden of proof initiated by the law of **Evidence Act Cap. 6 [R. E. 2019] in sections 110 (1) and (2), 111, 112 and 113** which provides:

***"110. (1) whoever desires any Court to give Judgment as to any legal rights or liability dependent on the existence of facts which he asserts must prove those facts exist.***

***(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person;***

***111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side;***

**112.        *The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person;***

**113.        *The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence."***

It follows therefore that it is a cherished principle of law that, generally in Criminal cases like the one at hand, the burden of proof lies on the Prosecution to prove the case beyond reasonable doubt.

I have seen it necessary to define the meaning of proving the case beyond reasonable doubt. The definition of the same can clearly be obtained in the case of ***YUSUPH ABDALLAH ALLY V R; CRIMINAL APPEAL No 300 of 2009 (Unreported)*** where it was observed that:

***"To prove a prosecution case beyond reasonable doubt means, simply, is that the prosecution evidence must be strong as to leave no doubt to the criminal liability of an accused person. Such***



***evidence must irresistibly point to the accused person and not any other, as the one who committed the offence. The said proof does not depend on the number of the witnesses but rather, to their credibility as per section 143 of The Evidence Act."***

Before I determine this case, let me outline some issues which were not disputed by both parties. The same are:

- a. *The accused name being **MARY MVULA** a Zambian Citizen;*
- b. *That the accused was apprehended on 2<sup>nd</sup> May 2012 at Julius Nyerere International Airport upon arrival from Pakistan via Dubai and Addis Ababa aboard Ethiopian Airline **ET 601**.*
- c. *That the accused personal belongings being her **Passport No. ZN 190899** issued on the **22<sup>nd</sup> October, 2010**, her air ticket and cellphone make Q Mobile was seized by the Authorities.*

In the matter under scrutiny, since it is the Prosecution who is alleging that the accused herein committed the offences charged, then the burden of proof lies on them. The question

before the court is whether Prosecution has successfully discharged their duty to prove the accused's guilty. In order to establish that, the court framed three issues for determination.

The same are as below:

- 1. Whether the accused herein has defecated 49 pellets suspected to be narcotic drugs;***
- 2. Whether the said 49 pellets were narcotic drugs;***
- 3. Whether the accused trafficked the 49 pellets containing narcotic drugs;***
- 4. whether the chain of custody in respect of 49 pellets was intact; and***
- 5. Whether Prosecution has proved the case beyond reasonable doubt.***

In resolving the first issue, of **whether the accused herein has defecated 49 pellets suspected to be narcotic drugs;** Prosecution brought in court four witnesses to testify in this regard. These were two independent witnesses being **PW5 Stella Badi** the Immigration Officer and **PW4 Ziara Mfinanga** also an Immigration Officer who testified to the effect that, while the accused was under observation and custody of ADU Police officers, **PW9 ASP Monica** and **PW10 WP 5459 Coplo Valentine** at JNIA on 5<sup>th</sup> May 2012 at two different times; they

witnessed defecating the total of 49 pellets suspected to contain narcotic drugs at the special toilet at JNIA.

The above stated witnesses testimonies is collaborated with **Exhibit "P6"** (Observation Form) which indicated the total number of 49 pellets that the accused was witnessed defecating. The said witnesses also testified to have written their names and signatures in the said Observation Form of which the accused person was also testified to have written her name and signature in the same.

On the contrary, it is the accused's assertion that she has nothing to do with the said 49 pellets and that she has never seen before PW4 and PW5 the independent witnesses, and that when they appeared before the court it was her first time to see them, despite the fact that they identified her in court.

Analyzing both Prosecution and Defense cases, there are some observations that have been perceived in order to test the weight of their testimonies before the court. The first is the fact that the four witnesses who testified to witness the accused defecating 49 pellets were the **eye witnesses** whom it was not easy for them to conspire since the accused's need to defecate at that particular time was not a planned mission. As rightly heard during trial, it was after the accused request that she wanted to

ease herself, it was when the said independent witnesses were found. The question further comes, if they were to conspire to defeat the accused, then what were they going to benefit out of the same?

Despite the accused denial to be involved with the existence of the 49 pellets, the strength of the eye witnesses testimonies as the one procured by Prosecution, is recognized in law particularly under **section 62 (1) (a) of the Evidence Act, Cap. 6 [R. E. 2019]** where it is declared that, oral evidence must in all cases whatever, be direct that is to say: If it refers to a fact which could be seen, it must be the evidence of the **witness who says he saw it**. Comparing the evidence adduced by the four Prosecution witnesses in this aspect, I tend to believe that they really witnessed the accused defecating the said 49 pellets as the same did not deny her existence at ADU offices for observation. Further, it is the fact that the accused after being arrested and after she was discharged from Muhimbili National Hospital, she was kept under observation at ADU offices at JNIA.

Eyewitness statements as commonly used in the criminal justice system and are considered having a high-probative value, especially when the witness has no motive to lie, as the ones who testified before the court and further as seen, their recollection corroborates the account of what happened and their demeanor

before the court was highly confident. So, the court has no any reason to misbelieve their testimonies on the fact that they witnessed the accused defecating 49 pellets as testified.

On a serious note during trial, the accused identified the Observation Form **Exhibit P6** showing the court her name and signature thereto. This act was a concrete confirmation that she was given the said form to write her name and sign as other witnesses. That served the purpose of the said Form as per the contents of the same and the contents thereto. On this I would like to refer to the contents at the heading of the said Observation Form which contains the personal particulars of the accused followed by the words "**DURING THE OBSERVATION, THE ACCUSED EMITTED SOME PELLETS SUSPECTED TO CONTAIN NARCOTIC DRUGS AS FOLLOWS**"; followed by information of date, time, pellets, accused's signature, independent witnesses' signatures, department, mobile and officer's signature which were all filled in accordingly.

It is from the above explanation, the first issue as to **whether the accused herein has defecated 49 pellets suspected to be narcotic drugs;** is answered **POSITIVELY**.

The second issue is whether the **said 49 pellets were narcotic drugs**. According to the Prosecution case of which I

have narrated at length above, upon arrival at the CGC, PW1 Mr. Ziliwa Peter Machibya the Government Chemist received Exhibit P2 from SSP Neema Mwakageni ADU Exhibit keeper in the company of PW9, PW10 and Detective Coplo Emmanuel. At the CGC PW1 started with the preliminary test of the 49 pellets where he took a very small quantities from each pellet and tested them. After testing the same, 13 pellets tested for Heroin while 36 other pellets tested for Cocaine.

After the said preliminary test, PW1 again weighed the said pellets and the **13 pellets** that detected to be Heroin weighed a **104.05 grams** and the **36 pellets** detected to be **Cocaine** weighed **287.64 grams**. It is from that exercise of which was conducted before PW6 and her company, PW1 packed back the 49 pellets and handled the same to PW6 whom with other police officers that accompanied her, returned to ADU Headquarters where the same were kept in the exhibit room.

Back at the CGC, PW1 from the samples he took from Exhibit P2, conducted a confirmatory test in CGC's Laboratory. From that test, it was determined and confirmed that the substance comprised in 13 pellets weighing **104.05 grams** was ***HEROIN HYDROCHLORIDE Diacetylmorphine Hydrochloride*** while the 36 pellets weighing **287.64 grams** were confirmed

**COCAINE            HYDROCHLORIDE            Diacetylmorphine Hydrochloride.** In support of his both preliminary and confirmatory tests to the pellets, PW1 tendered in court a Chief Government Chemist's Report on the 49 pellets dated 11<sup>th</sup> October 2012 duly signed by PW1 himself of which was admitted for evidence as **Exhibit P1**.

It is my considered view that, in place where the CGC have confirmed that the 49 pellets were narcotic drugs being **HEROIN HYDROCHLORIDE Diacetylmorphine Hydrochloride and COCAINE            HYDROCHLORIDE            Diacetylmorphine Hydrochloride** respectively, then the answer to this issue is to be found in the **Drugs and Prevention of Illicit Traffic in Drugs Act Cap. 95 [R. E. 2002]** as amended by **Written Laws (Miscellaneous Amendment) (No. 2) Act No. 6 of 2012** where Narcotic drugs is defined under **section 2** of the Act. The same is defined:

***"Any substance specified in the First Schedule or anything that contains any substance specified in that First Schedule to this Act".***

Going through the said First Schedule, made under **section 14 (1) of the Act (Supra), Schedules of the Single Convention on Narcotic Drugs of 1961** as amended by the

**1972 Protocol as at 18<sup>th</sup> May 2016, the list of drugs** included thereto includes ***COCAINE*** and ***HERION***, thus confirmed narcotic drugs under the Law.

In finding value of the said narcotic drugs, on 12<sup>th</sup> October 2012, ADU wrote a letter to the Commissioner for Drugs Control Commission requesting for estimation of the said dugs. The said letter was attached with the CGC's Report that displayed two types of drugs and weight of each. After a Valuation and Estimation of the same, the results were Heroin was worth **Tshs. 45,000/=** per gram while Cocaine was **Tshs. 50,000/=** per gram. Hence for **287.64** of **Cocaine** was estimated at **Ths. 14,382,000;** while **Heroin** weighing **104.05 grams** estimated at **Tshs. 4,682,250/=**. The same was supported by **Exhibit P3.**

In that regard, **the second issue whether the said 49 pellets were narcotic drugs; likewise the first one is answered in the affirmative.**

The third issue is **whether the accused trafficked the 49 pellets containing narcotic drugs.** To determine this issue, I hereby once again refer **section 2** of the **Drugs and Prevention of Illicit Traffic in Drugs Act (Supra)** where **Trafficking is defined as:**



***"the importation, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance any substance represented or held out by that person to be a narcotic drug or psychotropic substance ..."***

From the above definition, as the accused was arrested at JNIA arriving from Pakistan, suspected trafficking narcotic drugs, of which later was confirmed that she really had pellets containing narcotic drugs, she was found with her a Zambian Passport, Ethiopian Airline ticket, proved her entrance to the Country (Tanzania). The above scenario and the accused's acts aligned with the ingredients of Trafficking, that is **importation, storing and possession of the narcotic drugs**, thus the accused by entering the country with the said drugs, stored within her and therefore being in possession of the same, this confirms the offence of Drug Trafficking by the accused as defined by the Act. Consequently, the third issue **whether the accused trafficked the 49 pellets containing narcotic drugs; is answered POSITELY.**

The fourth issue is **whether the chain of custody in respect of 49 pellets was intact.** In determining this issue I would like to start with the events that took place on 5<sup>th</sup> May 2012 at 02:09 hours JNIA where the accused herein defecated before PW9 ASP Monica Mwanache and independent witness PW5 Ms. Stella Badi the Immigration Officer 33 pellets. After the said witnesses together with the accused counted the said pellets at the special toilet at JNIA, the same were recounted at ADU offices at JNIA immediate thereafter before they fill in the Observation Form, Exhibit P6. The said pellets where then kept under the custody of PW9.

It is PW9's assertion that later after her night shift, she took the 33 pellets to the ADU Headquarters and handed the same to PW6 SSP Neema the Exhibit keeper through occurrence book. On the same day around morning hours, PW7 SP Sylvester Siame testified to have been assigned by Commander Nzowa to go to JNIA to collect pellets believed to be illicit drugs. He states to have been informed by the later that at JNIA that there is a suspect by the name of Mary Mvula who is under arrest for trafficking illicit drugs. It is then he left the ADU Headquarters in company of the driver and the Police by the name of Immanuel heading to JNIA. At JNIA, he met Sargent Brown PW3 and PW10 WP 5459 Coplo Valentine and DW1 Mary Mvula who was under

observation. He was handed over 16 pellets by PW3 that DW1 defecated on the same day at around 09:50 am. The defecation that was witnessed by PW10 and Independent witness PW4 Ms. Ziara Mfinanga an Immigration Officer working at JNIA. He then headed to ADU Headquarters at Kurasini in company of the officers he had gone with to JNIA. Arriving at ADU, he handed over the 16 pellets to PW6 through an occurrence book. Further, PW6 states to have registered the pellets received at two different times on that day with File **No. KLR/IR/1522/2012** and placed the same at the exhibit room.

On 6<sup>th</sup> May 2012 at noon hours, PW6 testified to have conducted the sealing exercise which was preceded by counting the pellets under the File **KLR/IR/1522/2012** from the exhibit room which amounted to 49 pellets. The said exercise was done at ADU Headquarters in Commander Nzowa's office before the later, PW8 Ms. Zainabu Dua Maulana, PW9 ASP Monica Mwanache, DW1 the Accused herein and other officers of the Anti-Drug Unit. After the sealing of the pellets, on top of the enveloped the file No. **KLR/IR/1522/2012** accompanied by the names and signatures of PW6, PW8 and DW1 on it. Since it was late, PW6 states to have placed the packed envelope back to the exhibit room.

On the next day, 7<sup>th</sup> May 2012, PW6 was required to take the packed envelop to the Chief Government Chemist for investigation. She left to the CGC in the escort of PW9 ASP Monica, PW10 P5459 Coplo Valentine and Detective Constable Emmanuel. At the CGC, she produced a request letter with regards to the packed envelope which was then registered **Lab. No. 294/2012**. It is from there, PW1 took the packed envelope, opened the same and took some samples for testing in the presence the officers who brought the same and thereafter he placed the pellets back to the same envelope repacked and seal it with cello tape. He then handled the sealed envelope to PW6 who under the same company returned it to ADU Headquarters and placed it in the exhibit room.

The said envelope containing the 49 pellets was placed in the said exhibit room until on the 11<sup>th</sup> June 2019 when the same was tendered for evidence and admitted as **Exhibit P2** in this court.

From the above chronological trend of handling the 49 pellets from JNIA to the court, this court is satisfied that the chain of custody to the same was maintained and never broken despite of being challenged by Defense Counsel who was of the view that movement of Exhibit P2 would have been tempered with by those who handled it in the absence of the accused person.

It is common place that chain of custody can be proved by witnesses who were present while the exhibit exchanging hands and have given evidence provided the court has believed those witnesses. This position was adopted by the Court of Appeal of Tanzania in ***CHARO SAID KIMILU AND MBWANA RUA KUBO VS REPUBLIC, Criminal Appeal No. 11 of 2015 (Unreported)***.

However, the tempering of the of the said exhibit as suspected by Defense was quite impossible for a big number of Prosecution witnesses who handed the exhibit in question to conspire with the Prosecution in order to defeat or offend the accused who was unknown to them nor had any interest on or against her.

It is remembered that the accused when testifying as DW1 when referred to Exhibit P2, the 49 pellets, came up with an aspect of total denial saying that she has never seen the said pellets before and that she is not involved with it in any way. In the case of ***LEONARD JOSEPH @ NYANDA V. REPUBLIC, Criminal Appeal No. 186 of 2017, CAT at Dar es Salaam***, the Court was of the view that:

***"Perhaps, we should add that the Appellants defense of general denial was duly considered but***

***it did not impress the two courts below. We are not surprised; for, general denial is inherently a weak defense. It is negative and self-serving."***

In principle, I fully support the Court of Appeal's observation on the total denial as I wonder as to why the Defense Counsel have developed the interest of the chain of custody in respect of the 49 pellets claiming that the same had a great chance of being tempered in the circumstances where his client the accused herein denied totally to have known the existence of the same and its origin. If that is the case, then, the question comes, how can someone have interest in something that he / she does not have any knowledge of the same.

From the above, the fourth issue as to **whether the chain of custody in respect of 49 pellets was intact, is answered in affirmative.**

The last issue is **whether Prosecution has proved the case beyond reasonable doubt.** The term ***"to prove beyond reasonable doubt"*** was explicitly defined in the case of ***YUSUPH ABDALLAH ALLY V R.; Criminal Appeal No. 300 of 2009 (Unreported) to mean:***

***"To prove a prosecution case beyond reasonable doubt means, simply, is that the prosecution***

***evidence must be strong as to leave no doubt to the criminal liability of an accused person. Such evidence must irritably point to the accused person and not any other, as the one who committed the offence. The said proof does not depend on the number of the witness but rather, to their credibility as per section 143 of The Evidence Act."***

In this case, Prosecution paraded a number of ten witnesses and six exhibits to support their case. This court during trial had the testimonies of the said witnesses and was able to test and determine their demeanor as they were testifying. On the other hand, the Defense was able to call two witnesses the accused person inclusive and tendered for evidence seven exhibits. Further, after the closure of both Prosecution and Defense case, the Court had its case with three witnesses who did not tender any exhibit for evidence.

From the above, the court was privileged to ascertain the credibility of each and every witness accordingly. I have to declare that, from some of the Prosecution witnesses, DW2 and from Court's witnesses, I noted a very minor inconsistencies in their testimonies. The reason is so obvious taking into

consideration the interval of time from the year that the offence was committed and the arrest of the accused herein being **2012** up to the time of testifying during trial in this year i.e. **2021**, being the period of approximately **nine years**. The said inconsistencies neither did not go to the root of the case nor offended any party to this litigation as they were very minor as said above. This situation was well recognized in the case of ***MACELINE KOIVOBUGI VS REPUBLIC, Civil Appeal No. 469 of 2017 CAT at DSM (Unreported) at pages 36 - 37*** where minor contradictions to the witnesses occurred; but the Court of Appeal at page 37 ruled out that the said contradictions did not go to the root of the case and also they took into consideration that witnesses were testifying on the matter which had occurred **five years ago** the fact which made them not be remember everything correctly what had precisely happened. The same to the case before this honorable Court, of which it took **nine years** for the said witnesses to testify from the occurrence of some events concerning this case.

From the above and from the demeanor of the said witnesses, I have to declare that, from my considered view, those witnesses were credible and reliable witnesses unlike the credibility of the accused herein when she was testifying as **DW1**. I have to register my serious observation on her as there were



some serious ambiguities and clear lies that emerged in the cause of her testimony of which they have lowered her credibility and alert the court that there are so many issues to be desired on the witness under the circumstances, despite the fact that she testified under oath. Some of the serious and unwanted lies that I have observed are as below:

**First,** from Exhibit P4, the Accused Zambian Passport **No. ZN 190899**, the court detected that the time the accused testified to be working in Pakistan for continuous period of eleven months, as from 2011 to 2012 the time that she was arrested at JNIA coming from Pakistan, the accused's passport shows that she was very busy travelling to different countries in short intervals. The said countries are: Pakistan, Zimbabwe, Mozambique, Lesotho, South Africa, Tanzania and Zambia on several occasions. This defeats the fact which the accused said she only used her passport twice to Pakistan from Zambia and that she didn't know as to whom had stamped her passport as the same was not under her custody while in Pakistan.

**Secondly,** is the strange allegation that did not support her testimony throughout the fact that the accused was illiterate meaning that she does not know how to read and write. This fact did not support her since during her testimony when she was

referring to some documents in fact she was able to read them such as her name, her sister's name, her daughter's name, she was even able to read word Muhimbili and her signatures and name in the Observation Form which she declared to have written her name and placed her signature thereto. The question here comes as to what was the accused's motive or rather what was the accused going to benefit out of her allegation that she was illiterate?

The case of ***NKANGA DAUDI NKANGA V. REPUBLIC, Criminal Appeal No. 316 of 2013***, the Court of Appeal stated that:

*"As the rules goes, we wish to point out that lies of an accused person may corroborate the Prosecution case as we think it has. See the case of **FELIX LUCAS KISINYILA V. REPUBLIC; Criminal Appeal No. 129 of 2002, CAT (Unreported)**."*

From the above observation, it is my considered view that the Defense case particularly from the accused defense was shaken from her own testimony being inconsistent for denying some facts which were so straight and obvious of which did not add any weight to her case and on the contrary the same lowered her credibility.

From the above, as the burden of proof in this case lies on Prosecution, I am of the concrete view that Prosecution have successfully proved their case beyond reasonable doubt as the law requires. It was stated in the case of ***HEMED SAIDI VS MOHAMED MBILU (1984) TLR 113 HC*** that:

***"In law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win".***

Consequently, the issue as to **whether Prosecution has proved the case beyond reasonable doubt** is answered **POSITIVELY**.

Now owing to the above reasons, I concur with the unanimous opinion of the three Assessors that, the Accused person is **guilty as charged on the 1<sup>st</sup> and 2<sup>nd</sup> Counts** as they appear in the Charge Sheet. In the event therefore, likewise, I accordingly find the Accused **MARY MVULLA guilty as charged for the 1<sup>st</sup> Count and 2<sup>nd</sup> Count**.

Consequently, I proceed to **convict** her under the offence 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]** as amended by **Written Laws (Miscellaneous Amendment) (No. 2) Act No. 6 of**

**2012** for the **1<sup>st</sup> Count** and further **convict** her under the offence 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]** as amended by **Written Laws (Miscellaneous Amendment) (No. 2) Act No. 6 of 2012** for the **2<sup>nd</sup> Count**.

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**08/10/2021**

### **SENTENCE**

Having convicted the accused for the offence of **Trafficking in Narcotic Drugs under section 16(1) (b) (i) of the Drugs and Prevention of Illicit Traffic in Drugs Act Cap. 95 [R. E. 2002]** as amended by **Written Laws (Miscellaneous Amendment) (No. 2) Act No. 6 of 2012**, the Prosecution prayed the Court to sentence the Accused according to the law.

On the other hand, the Defense Counsel, pleaded for a lenient sentence on the following mitigation factors: that, the accused is the first offender, she is HIV positive, she has a young

child to take care and also that she has been in remand prison for **nine years** and has remained calm at all material time.

As I have already convicted the accused herein, we should ask ourselves as to why these kind of offences are serious and ones having severe punishments. I took interest of going through the literature on narcotic drugs and its effects. It came to my knowledge that there are many effects of using these drugs. Among them are short and long-term health effects. And that the side effects of drug addiction includes: A weakened immune system, Heart conditions, loss of appetite and weight loss, liver damage or liver failure, seizures, stroke, mental confusion and brain damage and increase of the fastest growing vector of HIV virus. Others are lung disease, problems with memory, attention and decision-making. The most severe health consequences of these narcotic drugs is **death**.

Drug abuse is often accompanied by a devastating social and economic impact on community life. As well as its contribution to violence, crime, financial problems and vagrancy. Moreover, substance abuse and addiction have grave consequences on our existing social systems, effecting crime rates, child abuse and neglect and domestic violence so to say.

If this is the case then, it is obvious that by using these drugs, this country's manpower especially to the youth is buried.

At this juncture, one can now have an answer as to why these kinds of offences attracts serious concern to the Nation and Worldwide.

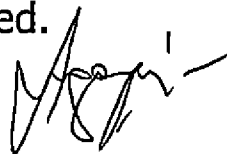
Before I sentence the accused herein, I have taken note that, the offence which the accused person has been convicted with commands the custodian sentence of **twenty years**. I have taken into consideration one of the mitigating factor that the accused has been in remand prison for approximately **nine years and five months**. I am mindful that the time she spent in remand prison before today the day that she has been convicted is a **substantive period of time** which attracts a lenient sentencing hand of this honorable Court after this factor has been mitigated. This is supported by the fact that an accused person is presumed innocent before conviction. This aspect is well acknowledged by **Article 13 (6) (b) of our Constitution, The Constitution of the United Republic of Tanzania (1977)**. That being the case, out of the 20 years' sentence, I have decided to deduct the number of years and months (**Nine years and five months**) the accused has spent in remand prison waiting for hearing of her case.

Consequently, as I have convicted the Accused, my hands are tied. In the event therefore, I procced to sentence the accused person **MARY MVULA** to serve **ten years and seven months**

**imprisonment** as for the **1<sup>st</sup> Count** and **ten years and seven months** as for the **2<sup>nd</sup> Count**. These two sentences **shall run simultaneously**; and in addition to pay the fine of **Tanzania Shillings Fifty Seven Million One Hundred and Ninety Two Thousand Seven Hundred and Fifty Shillings (Tshs. 57,192,750.00)** only which is three times the value of narcotic drugs (Tshs. 19,064,250/=) the Accused is charged for Trafficking in both counts in compliance of **section 16 (1) (b) (i) of the Drugs and Prevention of illicit Trafficking in Drugs Act Cap. 95 [R.E. 2002]** as amended by **Written Laws (Miscellaneous Amendment) (No. 2) Act No. 6 of 2012**.

It is so ordered.

Right of Appeal fully explained.



**L. E. MGONYA**

**JUDGE**

**08/10/2021**

**ORDER:**

The contents of **Exhibit P2** that is the substance comprised in **13 pellets** weighing **104.05 grams** of **HEROIN HYDROCHLORIDE Diacetylmorphine Hydrochloride** and that of **36 pellets** weighing **287.64 grams** of **COCAINE**

***HYDROCHLORIDE Diacetylmorphine Hydrochloride*** are to be confiscated and destroyed under the supervision of Hon. Deputy Registrar High Court Dar es Salaam in accordance with the law.

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**08/10/2021**

**Court:** Sentence pronounced in the open court in the presence of Ms. Kasana Maziku State Attorney, the Accused, Mr. Frank Killian, learned Counsel for the Accused and all the three (3) Assessors and Ms. Veronica RMA.



**L. E. MGONYA**

**JUDGE**

**08/10/2021**