

**IN THE HIGH COURT OF TANZANIA  
MTWARA DISTRICT REGISTRY  
AT LINDI**

**ORIGINAL JURISDICTION**

**CRIMINAL SESSION CASE NO. 2 OF 2018**

**REPUBLIC**

**VS**

**1. SANO SIDIKI**

**2. TUKURE ALLY**

**JUDGEMENT**

**Date: 05<sup>TH</sup> NOVEMBER 2021**

**HON. LATIFA MANSOOR, J**

The Accused persons, SANO SIDIKI, and TUKURE ALLY were prosecuted with the Offence of Trafficking in Narcotic Drugs contrary to Sections 16 (1) (b) (i) of the Drugs and Prevention



of Illicit in Drugs Act, Cap 95 R: E 2002, as amended by the Written Laws (Misc. Amendments) Act No. 6 of 2012.

It is alleged by the prosecution that on 7<sup>th</sup> February 2015 at around night hours the accused persons were caught at Nangurukuru Check Point, in Kilwa District with 40 packets of narcotic drugs known as Heroine, weighing 40,787.8. Grams.

Briefly, the facts of the case as alleged by the prosecution are that the two accused persons are all foreigners. Sano Sidiki is Guinean while Tukure Ally is a Ugandan. The accused went to Mozambique through Tanzania. They were travelling with a car, Make Landcruiser Station Wagon with Registration No. UAU 789 Z, when returning to Kampala Uganda via Tanzania they were caught at Nangurukuru check point with narcotic drugs suspected to be Heroine. They got the heroine from Mozambique, and they were transporting the Heroine to Uganda.

At check point in Nangurukuru, they were stopped by the police for a routine road check-up. The police checked the vehicle and suspected something fishy. They asked for the accused persons to open the back boot, and they saw an extra tank under the back boot. They asked the accused what they were carrying at the extra tank, and Tukure Ally, the 2<sup>nd</sup> accused said they were carrying bangi. Immediately, the police kept the accused under arrest, and called the police in Kilwa Masoko. The police from Kilwa Masoko went to the scene accompanied by one Bena Ally Malapa (PW4). Bena Ally Malapa was the Village Chairperson of Nangurukuru Neighbourhood. The village chairman called his secretary, and after the secretary arrived, the police and the independent witnesses searched the car. They used the spanner to open the extra tank of the car. There they found 40 packets of powder packed in a thick nylon bag. The drugs were wrapped in a white or creamy clothes and packed in a thick plastic bag. They were 40 packets of 1 kg each. The accused were asked by the police as to what it was, and they confessed that they

are carrying drugs of heroine type, and they were trafficking them to Uganda. The drugs were seized by the police in the presence of the village chairman and his secretary. The accused, the car and the drugs were taken to Kilwa Masoko Police Station. Afande Yakubu who is the exhibit keeper of Kilwa Police was called by the RCO to take the exhibits for safe keeping in the strong room. Before the exhibits were taken to the strong room Afande Yakubu, the RCO and Afande Raymond packed the exhibits on the khaki envelopes. Each envelope had two packets of the exhibits. Then the RCO asked the accused to write their names, addresses and telephone numbers on the envelopes, which they did. The envelopes were sealed and packed in two boxes. One box contained 12 envelopes while the other box had 8 envelopes. The boxes were marked with IR police labelling numbers. Then the RCO and Afande Yakubu took the boxes to Dar es Salaam, Anti-Drug Unit, and there they met Afande Neema who is the exhibit keeper of Anti-Drug Unit, Dar es Salaam. Then, Afande Neema, Afande Yakubu and the RCO of Lindi, took the

exhibits to the Chief Government Chemistry for testing. At the reception, the exhibits were received, and given a Lab Number. Then, each packet was opened, and samples were taken from each packet. All 40 packets were weighed, and it was 40.787.8 grams in total. The samples were tested by the Chief Chemist in the presence of the three police officers, i.e., Afande Neema, Afande Yakubu and the RCO. The Chief Chemist confirmed that all the 40 packets contained drugs of Heroin Hydrochloride or Diacetylmorphine Hydrochloride. Then the exhibits were repacked and handed over to D.3082 S/Sgt Yakubu Mohamed, herein before referred to as "Afande Yakubu". Then Afande Yakubu, Afande Neema and the RCO went back with the exhibits to ADU, and Afande Yakubu handed over the exhibits to Afande Neema for safe keeping.

The accused persons were interrogated by the police, and then they were taken to the Justice of Peace for recording their confessions. While the 1<sup>st</sup> accused repudiated his confession saying that he did not know Swahili language while recording his confession, the 2<sup>nd</sup> accused agreed that he

recorded his confession before the Justice of Peace freely and voluntarily. The 2<sup>nd</sup> accused also retracted his confession during his defence, saying he did not understand what was recorded but he was simply asked to thumb print on the papers that were already written. The confessions of both accused persons were received in court as exhibits.

During Trial, the prosecution was conducted by Mr. Joseph Maugo and Mr. Abdulrahman Mshamu, the Learned Senior State Attorneys, and the accused persons in their defence enjoyed the services of Mr. Robert Dadaya, the Learned Advocate.

To prove the case, the prosecution presented Dominican Dominic Mutayoba, the Chief Chemist as PW1, SSP Neema Mwakagenda "Afande Neema", the ADU Exhibit Keeper as PW2, Kenneth James Kasseke, the ex-Commissioner of ADU as PW3, , Bena Ally Malapa, the Ex-Chairman of Nangurukuru and as an independent witness during searching and seizure as PW4, Ex Police Yakubu Mohamed as PW5, , Police Peter,

the police who recorded the 1<sup>st</sup> accused cautioned statement as PW6, Honorable Frank Michael Lukosi, the Magistrate who recorded the accused confessions as PW7, Police Officer Athumani Daudi Momolo as PW8, Assistant Commissioner Joseph Mfungomara, the then RCO of Lindi Region as PW9, and Police with No. G5803 D/C Raymond as PW10.

The prosecution also tendered the 40 packets of drugs of Heroin type as Exhibit P1, the Report from the Chief Chemist as Exhibit P2, the Certificate of Value of the drugs as Exhibit P3, the Confession statement or extra judicial statement of the 1<sup>st</sup> accused Sano Sidiki as Exhibit P4, the Confession Statement or Extra Judicial Statement of Accused No. 2, Tukure Ally as Exhibit P5, and the Record of Search (P.F.91) as Exhibit P6.

The evidence of Dominican Dominic Mutayoba (PW1) was that he is the Chief Chemist, and on 9/2/2015, his office received from Afande Yakubu Mohamed two boxes which contained 40 packets of powders suspected to be drugs. The 40 packets

were weighed and found to be 40.787.8 grams. The packets were given Lab No. 110 of 2015. He said, he tested the samples of each packet. He was assisted by other chemists, and the testing was done in the presence of the police. The test results were that the powders in all the 40 packets were drugs known as Heroin Hydrochloride or Diacetylmorphine Hydrochloric. He said, the user of these kind of drugs get addiction and cannot be treated easily. This witness tendered the 40 packets of drugs known as Heroin Hydrochloride or Diacetylmorphine Hydrochloric and these were received as Exhibit P1. He also tendered a Report which was received by Court as Exhibit P2. The Report shows that the 40 packets contained drugs of Heroine Hydrochloride or Diacetylmorphine Hydrochloric of 40.787.8 grams.

PW2, SSP Neema Mwakagenda "Afande Neema" is the exhibit Keeper at the Anti-Drug Unit, Dar es Salaam. She deposes that on 9<sup>th</sup> February 2015 in the morning, she was summoned to the office of the Commissioner for Anti-Drug Unit, and when she was there, she saw St/Sgt Yakubu Mohamed



"Afande Yakubu" from Lindi, and other Police Officers from Lindi. The Commissioner or Head of Anti-Drug Unit introduced the police to PW2 and told her that they came with two boxes of 40.787.8 grams of substance suspected to be drugs, and that they should take the substances to the Chief Government Chemist for testing. PW2, Afande Yakubu Mohamed and the RCO of Lindi took the substances or exhibits to the Chief Government Chemist, and they were received, and the exhibits were labeled as Lab No. 110/2015. The boxes were opened, and one box had 12 envelopes while the other box had 8 envelopes. The envelopes were sealed, and on each envelope, there was written the names of the accused. The envelopes were opened, and each envelope had 2 packets of powders. The packets were of thick white nylon, and inside the thick white nylon there was a thick white piece of cloth which was stamped. The marking on the stamp was 444 SEASHELL 555. Each packet had this stamp. Inside the white cloth, there was another nylon, then there was the brown powdery substance. She said the Chief Chemist tested the

samples from each packet and the result came out that all the 40 packets contained drugs known as Heroine. Then all the packets were packed and sealed. The boxes were sealed and stamped by the Chief Chemist. The Chief Chemist prepared a Report and handed over the Report to Afande Yakubu Mohamed. Afande Neema, Afande Yakubu and the RCO of Lindi,

SSP Joseph Mfungomara took the exhibits back to ADU, and Afande Yakubu handed over the Exhibit through a Dispatch Book to Afande Neema for safe keeping. Afande Neema kept the exhibits in the strong room, she says she registered the exhibits in Exhibit Register PF.16 on case No KLM/IR/48/2015 and kept the drugs in the strong room. Afande Neema said she was also given the Certificate of Identity of Ali Tukure, Declaration of importation of Sano Sidiki Abubakar issued by Muteba Omari, Yellow Card of Muteba Omari, Guinean Passport of Sano Sidiki with No. R0479650, Driving Permit of Sano Sidiki Abubakar, Driving License issued by Congo of Ali

Tukure, 4 mobile telephone sets, 2 Nokia, one Samsung Duos and another of Model No. I9295.

This witness brought the two boxes which contains the 40 packets from Dar es Salaam to the Court in Lindi. The Boxes were marked with No. KLM/IR/48/2015. The Boxes were sealed with a Cello tape. The boxes were opened in Court and there were 12 khaki envelopes in one box, and 8 khaki envelopes in the other box. The envelopes were sealed, and each envelope was written the names of the accused. Some envelopes were written the names of Sano Sidiki, and some were written the names of Tukure Ali. The Envelopes were opened in Court, and each envelope had two packets. The packaging of each packet was of thick white nylon, inside the nylon there were the white cloth stamped and written 444SEA SHELL555. Inside the white cloth, there was another nylon, and inside the nylon there were brown substances looking like brown powder and tree barks of woody plants. These 40 packets were all received as evidence and marked as exhibit P1.

PW3 was Kenneth James Kasseke, who was the Chief Executive Officer of Drug Control Commission. He said, he made the valuation of the Drugs, which was grams 40.787.8, on 23 April 2015. The drugs were labeled with case file No. KLM/IR/48/2015, and the suspects were Sano Sidiki and Tukure Ally. The value of the drugs was TZS 2,039,390,000. He applied the market value to get the value of the drugs as of April 2015. He presented in Court the Certificate of Value of Narcotic Drug and psychotropic substances dated 23<sup>rd</sup> April 2015, and this was received as evidence and marked as Exhibit P3.

PW4 was Bena Ally Malapa. This was the Leader of Mpingo Neighborhood in Nangurukuru Village in Kilwa District. He said he was called by the police and went to Nangurukuru Check point on 7<sup>th</sup> February 2021 around 21.00 hours. He called his Secretary Hemed Mohamed Ngumbe who also arrived at Nangurukuru check point around the same time. At the Check point they found the police who told them that they have arrested two people who were in a car with Registration No,

UAU 789Z Toyota Land Cruiser, silver Color, and that they have put the driver and the passenger under arrest. They suspect the vehicle to be loaded with drugs, and so they want to search it. This witness says he witnessed the search, and the police recovered from the vehicle 40 packets of well packed substances which they suspected to be drugs. He said the drugs were hidden in a tank which looked like a fuel tank under the car boot. He said the police opened the boot with a spanner and there they recovered the 40 packets of substances suspected to be drugs. He also says Tukure Ali confessed before the police that they were carrying bangi, and later Tukure Ali said they were carrying heroine, and that they took the heroine from Nampula in Mozambique, and they were transporting the drugs to Kampala Uganda.

PW5 was police officer with No. D3082 S/SGT Yakubu, hereinbefore referred as "Afande Yakubu". He is now a retired officer. He is the exhibit keeper of Police Lindi. He was involved in getting the exhibits from the vehicle in Kilwa Masoko Police Station to inside the police post in Kilwa

Masoko. He was also involved in weighing the exhibits at Kilwa Masoko Police Post on 8<sup>th</sup> February 2015. He packed the 40 packets in 20 khaki envelopes. He witnessed the accused writing their names and addresses on the envelopes. He also packed the envelopes on the two boxes, one box had 12 packets and the other box had 8 packets. He labeled the boxes with Police File No. KLM/IR/48/2015. He also sealed the boxes in cello tape and kept them in the strong room.

On 9<sup>th</sup> February 2015, him, the RCO of Lindi, namely, SSP Joseph Mfungomara, Police with No. G5803 D/C Raymond together with officers from TISS took the exhibits to Anti-Drug Unit in Dar es Salaam. At Dar es Salaam, they were received by the Commissioner of Anti-Drug Unit (ADU), and they went to the Chief Government Chemist for testing the exhibits. They went to the Chief Chemist with Afande Neema and the RCO of Lindi SSP Joseph Mfungomara. He said he witnessed when the packets were opened at the Laboratory by the Chief Chemist and the other chemists, and he witnesses the samples taken from each packet. He said when the samples were tested,

they changed color, and the Chief Chemist had given them the test results. The Results confirmed that the substances in each packet were drugs known as Heroine. He said then the drugs were repacked back on the envelopes, and then onto the boxes, they were then sealed, and taken back to ADU. He handed over the drugs to Afande Neema by a dispatch book.

He also said, he was given the Report by the Chief Chemist and kept it on the police file. These witnesses identified the drugs in court when shown to him. They identified by the labeling he made, that is the Case Number KLM/IR/48/2015 written on the two boxes, the Lab Number 110/2015, also written on the boxes, and the khaki envelopes on which the names of the accused, their addresses and telephone numbers were written. He also identified the packaging, and the stamps written 444 555 SEASHELL on each packet.

PW6 was F.6748 D/C Peter. He had this police number in 2015 but now has been promoted to Inspector of Police. He said he recorded the statement of Sano Sidiki on 7<sup>th</sup> February 2115 at

00.45 hours. He said he informed the accused of his rights of calling his relatives or friends or an advocate, but Sano Sidiki chose to record his statement on his own. He said although Sano Sidiki was of Guinea Nationality, he had lived in Uganda and Congo for a long time, and he knew and understood Swahili language. He said he spoke with him in Kiswahili, and his statement was recorded in Kiswahili. The Statement was not tendered in court as evidence and so its contents are unknown. He also said he took Sano Sidiki to the Justice of Peace as Sano Sidiki wanted to record his confession before the Justice of Peace.

PW7 was Hon. Frank Michael Lukosi. He is the Primary Court Magistrate serving at Kipatimo Primary Court but also visiting other Primary Courts within Kilwa District. He said on 9<sup>th</sup> February 2015, while he was on duty at Kilwa Masoko District Court, at around 15.45 hours, the Court Clerk informed him that the police came to see him. It was police Peter who went there with accused No. 1 Sano Sidiki. Sano Sidiki wanted to record his confession. He said he recorded the confession of



Sano Sidiki at the Court premises, and they were the only two of them. He said Sano Sidiki was informed of his rights in Kiswahili and he understood and decided to record his confession freely and voluntarily. He said Sano Sidiki was communicating in Kiswahili, but his accent was different, and his Kiswahili was not very fluent. He said, Sano Sidiki understood Swahili and so the statement was recorded in Kiswahili.

PW7 tendered in Court the confession of Sano Sidiki, Sano Sidiki objected the admission of the confession saying that as he did not know Swahili, he did not record any confession before the Magistrate.

Following the objection, the Court carried out an enquiry through a trial within a trial, and the Court found out that Sano Sidiki understood Swahili, and he recorded his confession before the Justice of Peace in Kiswahili, freely and voluntarily. The confession was received in Court as exhibit and marked as Exhibit P4.

Again, this witness said he recorded the confession of Tukure Ally, accused No. 2. He also said he informed him of his rights before recording the confession, and Tukure Ally freely and voluntarily recorded his confession before him. The two accused admitted that they went to Nampula Mozambique to take the 40 packets of heroin and they were transporting the drugs to Kampala Uganda. They both confessed that the drugs belong to them, and they were caught by the police in Nangurukuru Check point. They had hidden the drugs in the car, and the police recovered the drugs from the car, it was 40.878.8 grams of heroin recovered from them. The statement of Tukure Ally was admitted as evidence and marked as exhibit P5.

PW8 was Police Officer Athumani Daudi Momolo, He was the Acting head of investigation of Kilwa District in 2015. He said on 7<sup>th</sup> February 2015, at around 21.40 hours he received a call from Police officer with No. G. 5803 D/C Raymond who was at guard at Nangurukuru Check point. D/C Raymond informed him that they have arraigned a vehicle which is suspected to

have drugs. He said D/C Raymond said the accused have confessed that they are carrying drugs in the car. He said, he went to the check point or barrier at Nangurukuru and found the Vehicle Landcruiser with Registration No. UAU 789Z, and two accused persons who introduced themselves as Sano Sidiki Abubakar and Tukure Ally. These accused told PW8 that they were coming from Nampula Mozambique and admitted carrying the heroin in the car. They admitted carrying 40 packets of heroine, and each packet had 1 kg of heroine. They said the 40 packets belongs to both. He said it was Tukure Ally who showed him to where they kept the heroin. The police had called the leaders of the village who was Bena Ally Malapa and Hemedi Mohamed Ngumbi. The drugs were recovered under the boot of the vehicle in a tank. The 40 packets of the drugs were recovered in the presence of two-independent witnesses. They were seized and a certificate of seizure in Form No. P.F91 which is a record of Search by Police Officer was completed. It was signed by the independent witnesses Beno Ally Malapa, and Himidi

Mohamed. It was also signed by Sidiki Sano, the 1<sup>st</sup> accused as the driver of the vehicle found with drugs, and Athumani Momolo as the seizing officer. The Duplicate of the Seizure Note was taken to the Magistrate, the Magistrate signed and stamped it with the Court Seal. The Report of Search was admitted in Court as Exhibit P6.

PW9 was the Assistant Commissioner Joseph Mfungomara. He was known as SSP Joseph Mfungomara in 2015, when he was the RPC of Lindi Region. His evidence was the repetition of the evidence of the other police officers who witnessed the search and seizure, and who witnessed the testing of the substances at the Chief Chemist. He said, on 08 February 2015, he was informed by PW8 by a telephone call that a car suspecting to carry drugs was searched and seized at Nangurukuru Barrier. He immediately informed the Director of Criminal Investigation and the RSO. Him and the officers from the RSO went to Kilwa Masoko. He then contacted the District Commissioner who sent a force at the police. He said at the police station he interrogated the accused persons, and both admitted having

been found with 40 grams of narcotic drugs known as heroine, and that they were trafficking the drugs from Mozambique to Kampala Uganda. He said he instructed the exhibit keeper Afande Yakubu to pack the drugs into the envelopes. The packets of drugs were all packed in the khaki envelopes, and each envelope had two packets. Then the accused wrote their names on the envelopes, they also wrote their addresses and telephone numbers. On the 9<sup>th</sup> of February 2015, him, Afande Yakubu and Afande Raymond took the drugs to Dar es Salaam for testing. They first reached the offices of ADU, together with Afande Neema, they all went to the Chief Chemist for testing the drugs. He says, the drugs were tested in his presence, and the Chief Chemist informed them that the results are that all the 40 packets contained drugs known as Heroine. He also recognizes the packets of drugs in court and had said that the accused in the dock were the same people arrested with drugs at Nangurukuru barrier.

PW10 was G5803 D/C Raymond. He was at the check point at Nangurukuru on the date of the incident. He said he was in

the normal duties of checking the traffic offences, and this car arrived. He said, he asked the driver Sano Sidiki for his driving license and the vehicle registration card, the driver said he didn't have them. He then asked the driver to switch on the internal lights of the car, the driver said, the lights have faulty, but he switched them on, and they were working well. In the car there was the driver and the passenger, the passenger was Tukure Ally. He again asked for the driver for his driving license and the car registration card. The driver took from his pocket the driving license and gave it to PW10. Then PW10 asked the driver to open the back boot, the driver Sano Sidiki said the back doors of the car are broken and had tied them with a manilla rope. The driver asked the passenger to go open the back doors, and PW10 saw the back seats folded. He also saw the bags and two drums of fuel, each of 20 liters. PW10 bend under the car and saw a trunk made of aluminum sheets, and asked the passenger what the trunk was for, the passenger said the trunk is for fuel, but it is also broken. Then PW10 banged the trunk and suspected that it might have

been loaded with something. He asked the passenger what was in the trunk, the passenger started to get worried, he then said they are carrying bangi. PW10 called the in charge of the barrier Coplo Alli, and Afande Deus. They all came to the car and Afande Deus called the driver to come behind the car. The accused were interrogated, and they said they are carrying bangi, and they have fetched the bangi from Nampula Mozambique. Then, PW10 asked as to what kind of bangi they went to fetch in Mozambique, then the accused said it was heroine. The accused said in their country they call the heroine bangi. The accused also told the police that they are carrying the 40 packets and each packet had 1 kilogram of bangi. They also confessed that they have kept the 40 packets under the car boot in the trunk. Then, Afande Deus called the Acting Head of Investigation namely Athumani Momolo (PW8). Athumani Momolo went to the scene accompanied by the independent witnesses who are Bena Ally Malapa(PW4) and Hemedi Mohamed Ngumbi. Bena Ally Malapa and Hemedi Mohamed Ngumbi are the leaders of Nangurukuru Area. Then

they opened the trunk using the spanner. The trunk was locked with bolt nuts, and so they used the spanner to open the bolt nuts. They all saw the 40 packets of drugs. They counted them and numbered them. Then, Afande Athumani Momolo completed a seizure note which was signed by Afande Momolo as the seizing officer. The seizure note was signed by the driver of the vehicle Sano Sidiki, and by the independent witnesses.

Then, the vehicle, and the drugs and the two accused were taken to Kilwa Masoko Police. He said he witnessed the drugs being packed in the envelopes, and saw the accused writing their names and addresses on the envelopes.

He identified the packaging of the 40 packets by saying that the packets were stamped, and the stamp had the numbers 444-555-\*\*\*, and the words SEASHELL. When he was shown the packets in Court, he managed to identify them using these numbers. He also identified the accused on the dock as the



same people he had arrested at Nangurukuru barrier with 40 packets of heroine.

The rest of his evidence was with regards to escorting the then RPC of Lindi, and Afande Yakubu to Dar es Salaam for testing the drugs.

That was all for the prosecution.

The court found the accused with a case to answer; upon being addressed of their rights in terms of section 293 (2) of the Criminal Procedure Act, Cap 20 R: E 2019, they chose to give their defense under oath.

Both the accused persons denied ever being found with the drugs. In their defense they both said they were hired by one Mohamed Congo as drivers. That Mohamed Congo was the one who hired the car from one Omar Muteba, but Omar Muteba had written authorization letter to allow the 1<sup>st</sup> accused to drive his Car with Registration No. UAU 789Z, Toyota land Cruiser from Kampala to Mozambique and back to Kampala. They both said, they travelled with Mohamed, who

was their Boss from Kampala, and they were heading to Maputo, but when they reached to Nampula, they stopped, and stayed in the hotel. They were informed that the bridge between Nampula to Maputo was broken, and so they could not travel to Maputo and decided to go back to Uganda.

The first accused in his defense said, at Nampula, while he was praying the fajr prayers, Tukure Ally took the car keys to Mohamed, and Mohamed returned the car in the evening hours. Then, Mohamed asked them to travel back to Kampala. The 1<sup>st</sup> accused produced in Court the photocopies of the Registration Book of Motor Vehicle with Registration No. UAU789Z, Toyota Land Cruiser, and this was admitted as Exhibit D2, and the Letter or Declaration written by Omari Muteba on 15<sup>th</sup> January 2015, permitting the 1st accused to drive his car from Kampala to Mozambique and back to Kampala, and this document was admitted in Court as Exhibit, D1.

Both accused persons in their defense said, they reached Nangurukuru barrier on 7<sup>th</sup> February 2015 at night hours. They were stopped by the police. While the other police asked the 2<sup>nd</sup> accused to get out of the car, the 1<sup>st</sup> accused said, the traffic police were asking him for his driving license and the registration card of the vehicle. The 1<sup>st</sup> accused said, he gave these documents to the traffic police.

They both claims that they were with Mohamed in the car at Nangurukuru, and Mohamed was sitting at the back seat of the car, but they did not know how and when Mohamed escaped from the scene.

The 2<sup>nd</sup> accused said the police asked him as to how many tanks were in the car, he said there was only one tank, and said he was then handcuffed and put under arrest. The 1<sup>st</sup> accused also said, he was asked to get down of the car, he was handcuffed and, he was put under arrest. Both the accused persons deny having ever been searched, and said the vehicle was not searched and nothing was seized from the

vehicle. The 1<sup>st</sup> accused denies having signed the seizure note.

Both accused persons denies having recorded either the statement at the police station or before the Justice of Peace. While the 1<sup>st</sup> accused said he did not know Swahili at all, the 2<sup>nd</sup> accused said, he understood a little bit of Swahili, but the Swahili of Afandé Sylvester and that of the Justice of Peace, he did not understand. Both accused persons repudiated their confessions.

They both denied having witnessed the police repacking the heroin packets into the khaki envelopes, they both denied having written their names and addresses on the khaki envelopes. Generally, they both denied having been found with the heroine, and claims that they were framed. They claim that they are innocent and prayed for their acquittal.

The evidence of the prosecution and that of the defense were summed up before the assessors, and all the three assessors unanimously have opined that the case for the prosecution

was proved beyond reasonable doubt and advised the Court to find the two accused guilty of the offence charged.

I have carefully considered the opinion of the wise assessors in this Judgment.

The case of the prosecution as deposed by its 10 witnesses and six exhibits is that on 7th February 2015, at 21.00 hours, the Police Officers, Afande Raymond (PW-10) raided the car with Registration No. UAU 789 Z, Landcruiser Station Wagon at Nangurukuru Barrier. PW10's team comprising of two more officers, who are Afande Deus, and Afande Ally raided the said vehicle and interrogated the accused persons who admitted having carried in the car 40 packets of drugs of heroine. At the spot, other police officers from Kilwa Masoko and two independent witnesses, Bena Ally Malapa and Hemed Mohamed Ngumbi, the leaders of the neighborhoods joined them.

The team disclosed their identity, and the car was searched. The accused persons did not decline to be searched. When the car was searched, it was found to be carrying 40 well packed packets containing off-white or brown powder which tested positive for heroin. The consignment weighed 40 kg or 40.787.8 grams. The 40 packets were seized, and a seizure note was completed by the seizing officer and the independent witnesses. The seizure memo in triplicate was prepared on which the independent witnesses and the 1<sup>st</sup> accused also signed. The car, and the 40 packets were taken to Kilwa Masoko Police, and they were packed in sealed envelopes, and then onto the two boxes. The envelopes and the boxes were properly labelled and marked. Then the boxes were taken to Dar es Salaam to the Chief Government Chemist, and samples from each packet were taken and marked with a Lab No. 110/2015.

The accused persons at Kilwa Masoko Police are stated to have tendered their statement incriminating themselves in the alleged recovery and trafficking of the contraband. The seized

contraband was deposited with Afande Yakubu (PW5) before the testing, and to Afande Neema (PW2) after the testing for safe keeping in the strong room at the Anti-Drugs Unit, KDU. The Chief Chemist found that the samples contained diacetylmorphine and therefore they are Heroin Hydrochloride. The samples with Lab No. 110/2015 and Case File No. KLM/IR/48/2015 were sent for evaluation and the value was TZS 2,039,390,000 .00. The Statements of about 14 witnesses were recorded. After investigation, the charge was filed against both accused persons. They were jointly charged under Section 16 (1) (b) (i) of the Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95 R: E 2002. Ten witnesses were examined by the prosecution.

In their defense, as stated hereinabove, both accused persons claimed that they have been falsely implicated; they both admits that they were driving the vehicle with Registration No UAU 789Z, Toyota Land Cruiser Station Wagon, they were heading to Kampala, and they were coming from Mozambique. That they were stopped at Nangurukuru Barrier, but the

vehicle was never searched, and nothing was recovered from the vehicle.

Starting with the recovery, there was ample evidence from Afande Raymond (PW10), Afande Athumani Momolo (PW8), and the independent witness (PW4) that the Car with Registration No. UAU 789Z, Toyota Landcruiser, Station Wagon, Silver in Color was stopped at Nangurukuru. This car was registered in the name of Omar Muteba, but the 1<sup>st</sup> accused Sano Sidiki was driving it, and the man who was sitting at the passenger's seat was Tukure Ally, the 2<sup>nd</sup> accused herein. The car was searched by the police and 40 packets of the drugs were recovered. The search was done in the presence of the independent witnesses, who deposed in court and confirmed that they witnessed the search and seizure, and the 40 packets of the heroine were recovered from the car. Therefore, the search and seizure were done, and it was done as required by the provisions of section 38 of the Criminal Procedure Act, Cap 20 R: E 2002.



On the question of tampering with the exhibits, there was nothing material which came out from the defense to show that the exhibits were tampered. There was proper labeling and recording of the exhibits on the movement register. The exhibits were moved from Nangurukuru Barriers to Kilwa Masoko Police Post and handed over to PW5 Afande Yakubu by Afande Athumani Momolo (PW8) through an OB "the Occurrence Book. "PW-5, PW8, PW 10 and PW9, all the police officers had stated that the 40 packets were packed on 20 envelopes, and each envelope contained 2 packets, and they all confirmed that the accused persons wrote their names, addresses and telephone numbers on the khaki envelopes. Again, the Boxes were registered with the Police File Case Number, and when the boxes were taken to the Chief Government Chemist, they were all marked with a Lab No. 110/2015. Again, the original packaging of the 40 packets shows that under the thick nylon, there was a white cloth which was stamped, and the stamp were marked with numbers 444-555- and the word SEASHELL. These are the

same packets brought to Court, with the same markings. These were the same envelopes, seals and had the addresses of the accused persons, their telephone numbers, and their home addresses in Kampala Uganda. A perusal of the record show that there was nothing to infer that the exhibit was tampered with. The evidence of the four police officers of Lindi Region, corroborated each other, and was further corroborated by the evidence of the exhibit Keeper of Anti-Drug Unit, Afande Neema who deponed as PW2, and vice versa. The depositions of these police officers on identification of the 40 packets seized from the accused persons in Nangukuru Barrier was also corroborated by the independent witness Mr. Bena Ally Malapa, (PW4), and exhibit P1, which was brought to Court and recognized by all the police officers who deponed in Court, the independence witness, and the Chief Government Chemist, thus the question of tempering with the exhibit has been ruled out.

Regarding the Testing and Test Results of the samples, during the trial, there was a discrepancy in color and texture,

between witnesses, some said after testing the sample changed to purple, some said they changed to red color, and some said the sample changed to brown color. These discrepancies were cleared by PW1, who is the Chief Chemist, and had confirmed that he tested the contraband, and all samples tested positive for heroin. The discrepancies of color stated by the police officers who witnessed the testing could be due to the time that lapsed from 2015-2021, and clearly long time had passed, and witnesses are bound to forget. It is not the case that the illicit heroin was manufactured in the laboratory. The Chief Chemist himself said the sample was found to contain diacetylmorphine. No tampering with the sample at any stage is seen. In the absence of any evidence to the contrary, it cannot be doubted that the recovery was not made in the manner it is alleged to have been made.

The actual quantity of heroin worked out to be 40.787.8 gm, which is a commercial quantity. The witnesses PW5, and PW9 and PW1 said they measured the weight by a scale and

confirmed with the weight given by the accused themselves, that each packet weighed 1 kilogram, and thus 40 packets were of 40 kilograms. Therefore, there is no variation in the weight of the contraband. It is noted that nothing could be inferred from the testimonies of pws 1, 2, 5, 8 ,9 and 10 that the sealed envelope containing the samples received had been tampered with.

Regarding the independent witness (PW4), Bena Ally Malapa, this witness appeared in Court and gave his testimony. This is the public witness who was summoned by the police to witness the search and seizure of the contraband. Nothing could be inferred from the testimonies of the raiding team of police that the independent witness was only named on papers. He confirmed before the Court that he is the Leader in the Neighborhood, he is in fact the Chairman of the Neighborhood in Nangurukuru Village. He did not go alone to the scene but went with his secretary. Both witnessed the recovery of the 40 packets of heroine from the car, and they also witnessed the seizure by the police officers, and they had

signed on the seizure note. The mere fact that the prosecution witnesses were the police officers was not enough to discard their evidence. They had no motive to falsely implicate the accused persons. I accept the testimonies of PWS 1, 2, 7, 8,9 and 10, the police officers as being reliable and trustworthy.

Regarding the confessions made by the accused persons before the Justice of Peace and having examined the two confessions Exhibit P4 and P5, there contains personal details of the accused persons, and appears to be truthful. The fact that the statement was not written by the accused persons does not mean that they were involuntary. The accused persons have retracted their confessions saying they did not understand Swahili. The enquiry was done, and the Court finds out that the accused No. 1 spoke Swahili, had communicated in Kiswahili, and understood Kiswahili all the time, from the time of his arrest at Nangurukuru to the time he recorded his confession before the Justice of Peace. His personal particulars were correct, and these particulars could not have been formulated by the Justice of Peace. There was

nothing that was forthcoming from both the accused persons that they had known the Justice of Peace or had any conflict or animosity with the Justice of Peace for him to implicate these two accused on such a serious offence.

Admittedly the accused persons have both retracted their confessions recorded before the Justice of Peace. The said retraction was taken on record, and an enquiry was held. In any event, it is seen that while making the statement, the accused persons were in custody of the police. This is clear from the answers given by all the police officers who deponed in court as prosecution witnesses. It is also clear that both accused excuses for retraction of their confession is that they did not understand Swahili. The prosecution witnesses said they interrogated the accused in Kiswahili, and they understood Kiswahili very well. In court, during trial, and when the accused were given their defenses, they all spoke very good Swahili. The Judge, and the Assessors could well understand them. In any case, the retracted confessions were corroborated. The confession of the first accused was not only

corroborated by the confession of his co accused, but also with the evidence of PW6 Afande Peter, and that of the Justice of Peace. It be noted that the Court can convict the accused solely on his confession without it being corroborated as stated in the case of **Michael Luma vs. R (1994) TLR** at page 181 and also the case of **Hassan Juma Kanenyela & others (TLR 1992** page 100, the Court of Appeal held that *"it is matter of practice not of law that the confession taken involuntarily or retracted confession needs corroboration."*

All the accused persons retracted their confessions saying that these confessions were not obtained voluntarily as they did not understand Swahili. On this I am aware of the holding in the case of **Tuamoi vs. Uganda EALR 1967 Vol. 1** , in which it was held that *" a trial court should accept with caution a confession that was repudiated or retracted and must be satisfied that the confession was true."* Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The Court had conducted an enquiry and had satisfied itself that the confessions of the 1<sup>st</sup>

was voluntary as there was not any threat, torture, inducement, or promise, and that he understood Swahili very well at the time he made his confession. However, since the confessions were retracted, the truth is judged in the context of the entire prosecution case. The confession has fitted into the proved facts of the other witnesses for the prosecution. The court in this case shall act upon the retracted confessions of both the accused persons since there is an assurance from some other sources as to the guilt of the accused persons.

In any case, since the confessions were retracted, the court is not basing the conviction solely on the confessions, the confessions of the accused persons have been thoroughly corroborated by the evidence of all 10 prosecution witnesses and therefore it is safe to rely upon th confessions, as the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars by the other evidence of the prosecution.



The accused are charged under Section 16 (1) (b) (i) of the Drugs and Prevention of Illicit in Drugs Act, Act No. 95, R: E 2002, which reads:

Section 16 (1) (b) Any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance commits an offence and upon conviction is liable-

(i) In respect of any narcotic drug or psychotropic substance to a fine of ten million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and in addition to imprisonment for life but shall not in every case be less than twenty years.

From the evaluation of the evidence of the prosecution and as opined by the assessors, I join hands with them that the

prosecution was able to prove beyond reasonable doubt that the two accused in this case were found trafficking the narcotic drugs namely Heroin weighing 40.787.8 grams, valuing at TZS 2,039,390,000.00

I have also considered the defence of both the accused persons. Under Section 26 of the Drugs and Prevention of Illicit in Drugs Act, the burden of proof lies on the accused person to explain away their innocence. This section reads:

26.- (1) In any prosecution for an offence of possessing, dealing in, trafficking, selling, cultivating, purchasing, using or financing of any narcotic or psychotropic substance, the burden to prove that the narcotic or psychotropic substance, was possessed, dealt in, trafficked, sold, cultivated, purchased, used or financed pursuant to and in accordance with the terms of a license, permit or authority granted under this Act, Regulations, Rules

or Orders made thereunder, shall lie on the person charged.

- (2) Notwithstanding the provisions of subsection (1), it shall be a defence for any person charged for an offence involving possession of a narcotic or psychotropic substance if he proves to the satisfaction of the court that his possession of such narcotic or psychotropic substance was, considering all the circumstances of the case, not conscionable

The defence of the accused persons was of general denial. They only admit that they were in the car with registration No. UAU 789 Z, Land Cruiser Station Wagon, Silver Colour, the property of Omari Muteba. The 1<sup>st</sup> accused's defence is that he was permitted by the owner of the car to drive it to Mozambique from Kampala and back to Kampala, and that on 7<sup>th</sup> February 2015, he was driving this car, and he was stopped at Nangurukuru by the police. He denies everything else. The 2<sup>nd</sup> accused gave the similar defence to that of the

1<sup>st</sup> accused. They both admits that they were with the car with registration No. UAU 789 Z, Land Cruiser Station Wagon, Silver Colour, the property of Omari Muteba. They also admit that on 7<sup>th</sup> February 2015, they were stopped by the police at Nangurukuru, but they deny the rest of the accusations stating that they were framed.

There was no plausible explanation to explain away their innocence. There was ample proof from the prosecution that the car was found with 40 packets of heroin, and the car was in possession of these two accused parsons and nobody else. Since they were found dealing or trafficking the drugs, the offence was proved beyond reasonable doubt by ten witnesses of the prosecution, the accused persons failed to discharge their duty imposed to them under section 26 of the Drug and Prevention of Illicit in Drug Act, reproduced herein above by giving evidence that they were licensed or, permitted or they were given authority by the Government or any other authority to deal with the drugs. They also failed to prove to the satisfaction of the court that although they were

found in possession of the narcotic or psychotropic substance but were not conscionable.

Under the premises, and the evidence on record, I join hands with the unanimous opinion of the assessors. The prosecution has proved the case beyond reasonable doubt. Consequently, I find all the two accused persons, SANO SIDIKI and TUKURE ALLY guilty of committing the offence of Trafficking in Narcotic Drugs contrary to Sections 16 (1) (b) (i) of the Drugs and Prevention of Illicit in Drugs Act, Cap 95 R: E 2002, as amended by the Written Laws (Misc. Amendments) Act No. 6 of 2012, and they are hereby convicted of the offence of Trafficking in Narcotic Drugs contrary to Sections 16 (1) (b) (i) of the Drugs and Prevention of Illicit in Drugs Act, Cap 95 R: E 2002, as amended by the Written Laws (Misc. Amendments) Act No. 6 of 2012.



**L. Mansoor**

**J U D G E**

**5/11/2021**

## **ANTECEDANT**

### **Mr. Abdulrahman Mshamu, Senior State Attorney:**

We do not have past records of conviction of the accused person. However, the accused have been found guilty and they must be sentenced. The sentence is provided in section 16 (1) (b) (i), and the sentence is fine and imprisonment for Life or not less than 20 years.

We pray for the court to consider the effect of using drugs in the society. PW1 who is the Chief Chemist told us the effect of using the drugs which would damage the brain of the user. The court must have seen the drug addicts, the drug addict are our youths, and would have been effected by the use of the drug. They deserves a deterrent sentence as a lesson to them and the society at large.

We also pray that there should be an order of destroying the drugs under section 354 (2) of CPA, Cap.20 R.E 2019.

## **MITIGATION**

### **Mr. Robert Dadaya, Defence Counsel:**

The accused/offenders do not object the order of destroying Exhibit P1 under section 354 (1) of the CPA.

We pray for the leniency of the court. The accused have been in remand custody from 7/2/2015 till today. It is now 6 years and nine months; I pray for this time to be considered when passing the sentence. In the case of **VUYO JACK VS DPP, Criminal Appeal NO.334/2016, Court of Appeal in Mbeya, page 31 para 3, the Court** said:

“ the time spent by the appellants behind the bars before being found guilty, convicted and sentenced, would have been a mitigating factor in imposing the sentence, but not as (erroneously imposed by the trial Judge) to commence from the time of arrest, (as erroneously imposed by the trial Judge)”

We pray to the court to take into account the age of the accused, the 2<sup>nd</sup> accused is 61 years old. They are elderly, and so they deserve the leniency of the court, as they do not have energy to handle the imprisonment.

The two offenders are unhealthy. Sano Sidiki has a problem in Urinary system, he is getting treated at Lindi Hospital but he needs Medical help from bigger hospitals. His back and knees are aching during cold seasons, and he needs medical attention.

The 2<sup>nd</sup> offender has high blood pressure, and has pneumonia, and needs medical help. They get treated at Sokoine Hospital at Lindi.

The offenders have children and relatives who depends on them.

Sino Sidiki has a 9 years old child, and his livelihood depends on the offender. He also takes care of the five children of his deceased brother Ally Sano.

Tukure Ally, has a minor child and two wives. The minor is 9 years old; I pray for the leniency of the court.

That is all.

### **SENTENCE**

The court has considered the aggravating factors and the mitigating factors, and in particular it has taken into account the six years and nine months the offenders have spent in remand custody without trial, and the age of the accused and the health conditions of offender and thus, the offenders are ordered to jointly pay a fine of Tzs 6,118,170,000 which is equal to three times of the market value of the Heroin found with them which were valued at Tzs 2,639,390,000.00. In addition to the fine imposed herein above, each offender shall serve a term of 20 years in jail; This sentence has



been passed in accordance to Section 16 (1) (b) (i) of the Drugs and Prevention of Illicit in Drugs, Act, Cap.95 R.E 2005.

Having regard to the hazardous nature of the narcotic drug; Exhibit P1, the 40 packets of Drugs, of heroin type shall be destroyed immediately in the presence of the Commissioner of Anti Drug Unit, in the presence of the RCO of Lindi, in the presence of the Advocate for the offenders, Advocate Robert Dadaya, in the presence of Advocate Abdulrahman Mshamu, who is the Senior State Attorney who represented the State in this case, and in the presence of the Deputy Registrar of the High Court, Mtwara Registry, and the Magistrate in charge of Lindi Resident Magistrate Court and in the presence of the Chief Government Chemist. The order to destroy Exhibit P1 is passed under section 354 (2) of the CPA, Cap.20, R.E 2019.

It is so ordered.



  
**L. Mansoor**

**Judge**

**5/11/2021**

**Court:** Judgment delivered in open court in the presence of the accused persons who appeared under custody and represented by Advocate Robert Dadaya. The state was represented by Abdulrahman Mshamu, the Senior State Attorney, and in the presence of the Assessors.



A handwritten signature in blue ink, appearing to read "L. Mansoor", is written over the printed name.

**L. Mansoor**

**Judge**

**5/11/2021**