

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CRIMINAL SESSION CASE NO. 30 OF 2017

REPUBLIC

VERSUS

- 1. IDD S/O HASSAN CHUMU**
- 2. EPHRAIM S/ JOHNSON MMASA**

JUDGMENT

27/5/2022 & 20/6/2022

SIMFUKWE, J.

The accused persons, Idd Hassan Chumu and Ephraim Johnson Mmasa are jointly charged before this Court with the offence of Trafficking in Narcotic Drugs contrary to **section 16 (1) (b) of the Drugs and Prevention of the Illicit Traffic in Narcotic Drugs Act, Cap 95 R.E 2002**; as amended by **section 31 of the Written Laws Miscellaneous Amendment) Act No. 06 of 2012**. It has been alleged by the prosecution that on 02/3/2013, at Kilimanjaro International Airport within Hai District in Kilimanjaro Region, the accused persons were found trafficking 5418.78 grams of Heroin Hydrochloride or Diacetylmorphine Hydrochloride valued at Tanzania shillings Two hundred forty-three million eight hundred forty-five thousand and one hundred only (243,845,100/=). Both accused persons pleaded not guilty to the charge.

The prosecution called twelve (12) witnesses and tendered fifteen (15) exhibits to prove their case.



During the trial, the Republic was represented by Mr. Kassim Nassir Senior State Attorney, Ms Verediana Mlenza Senior State Attorney and Mr. Mabuba Malima the learned State Attorney. Mr. Majura Magafu Senior Learned Counsel appeared for the 1st accused while Mr. Modestus Njau learned counsel represented the 2nd accused.

Evidence tendered by the prosecution in support of the charge against the accused persons is to the effect that on 02/03/2013 the 1st accused person Idd Hassan Chumu was travelling to Budapest Hungary via Doha by Qatar Airline Flight No. QR 545. He was issued with Air Ticket No. 1573275770240 (exhibit P4), had a passport No. AB234941 (Exhibit P2) and carried one bag labelled **Bon Voyage Japan Express** (Exhibit P9) That, the 1st accused was supposed to depart to Budapest Hungary through Kilimanjaro International Airport. He checked in; his bag was tagged by his surname CHUMU. Thereafter, the said bag was taken to the Holding Baggage Screening (HBS) for screening while the 1st accused proceeded to the International Departure Lounge. Testimonies of PW7 Mary Mosha, PW8 David Msami Beno and PW12 Dastan Daudi Mtajura who were on duty at the HBS room are relevant.

It was also alleged by the prosecution that on the material day, the 2nd accused who was a Security officer employed by Kilimanjaro Airport Development Company (KADCO) was at work and he was assigned to work at gate No. 5. Whereas the 2nd accused approached his supervisor one David Msami Beno (PW8) and asked him to shift him to the Holding Baggage Screening (HBS) section on allegation that he had information that there would come a Thailand citizen with a luggage which contained minerals which were to be smuggled. The said supervisor (PW8) agreed to shift the 2nd accused to the HBS section where he joined Mary Mosha

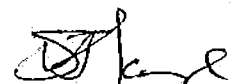
a Security officer (PW7) and Dastan Daudi Mtajura (PW12) a Minerals officer. That, the 2nd accused took control of the Xray machine. After a while, a bag alleged to have been tagged with the name CHUMU (exhibit P9) passed through the Xray machine. That, the machine showed something unusual in the said bag. The 2nd accused (Ephraim) did set aside the said bag and PW12 observed the unusual stuffs in that bag. The 2nd accused screened the said bag for the second time, the unusual contents were seen again. Then, PW12 instructed the 2nd accused to put aside the said bag for further inspection. PW12 instructed the 2nd accused to call the owner of the bag whose name appeared on the tag through a loud speaker as a normal procedure. That, instead of calling the owner of the bag through a normal procedure, the 2nd accused went to the Departure Lounge and stayed there for a while and went back to the HBS without the owner of the bag. The 2nd accused told PW12 who was waiting for the owner of the bag at the HBS that the said bag contains nothing except African beads (shanga). PW12 suspected that the 2nd accused knew what was inside that bag. Then, PW12 and PW7 insisted that the owner of the bag should be called. After a while the 2nd accused returned with the 1st accused. PW12 checked the travelling documents of the 1st accused whether they corresponded with the tag on the bag, the documents corresponded with the name on the tag on the bag. Then, PW12 asked the 1st accused what was in his bag. The 2nd accused told him that the bag contained beads. The 2nd accused requested PW12 to let the bag proceed on board on promise that he would give PW12 some money.

That, the 2nd accused wrote on a piece of paper which was cut from a newspaper "KAKA PLEASE ACHA HUO MZIGO." PW12 was prompted to



ask the 2nd accused what was in that bag, the 2nd accused changed the version of his story and told PW12 that there were narcotic drugs in the said bag. PW12 inquired from the 1st accused whether he was the owner of that bag, the 1st accused admitted to be the owner of the bag and proved that what was inside his bag were narcotic drugs but he begged PW12 that he should let that bag leave and that the 1st accused would give PW12 something. After this revelation the police officers were notified about the incident, they responded and went at the HBS and found the 1st and 2nd accused, PW7 and PW8 KADCO Security officers. PW4 WP CPL Janeth (as she then was) asked the 1st accused whether the bag belonged to him, the 1st accused admitted that he was the owner of that bag. Then, PW4 ordered him to open the bag and remove all the stuff from the bag. After the 1st accused had removed all his stuff, the said bag was still heavy. Suddenly the Xray screening machine switched off. They had intended to screen the suspected bag while empty, thus PW7 required the 2nd accused to report to their shift in charge David Msami (PW8), the 2nd accused alleged that he had no airtime. Thus, PW7 called PW8 and informed him that the Xray machine had switched off, PW8 went to the HBS room and managed to switch on the Xray machine.

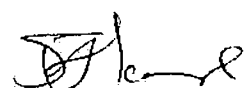
Then, Idd Chumu the 1st accused was ordered to place the suspected bag on the Xray machine while empty. The said bag showed that there was something inside it. It was opened and screened while open. Both sides of the bag showed that there was something on both sides. PW4 returned the suspected bag on the table and opened the zip to see if there was anything inside. She discovered that there was a plastic bag attached inside the said bag. PW4 tore the lining of that bag and smelt an odour smell and flour like substances came from that part of the bag which they



suspected to be narcotic drugs. PW4 asked the 1st accused what was that, he could not reply he remained trembling and asked for assistance.

Thereafter, the 1st accused was put under arrest, his suspected bag and his travel documents were seized on suspicion that he was trafficking narcotic drugs. PW4 reported to the OCS of KIA Police Station who sent a motor vehicle to pick them. Qatar Airline staff went and asked whether there was a big problem. They advised him to give them time. Then, the 1st accused was taken to KIA police station while carrying his suspected bag. At KIA Police Station, the suspected bag was torn inside on each side. Four parcels wrapped in black plastic bags were seized therefrom. The four parcels were opened and flour like substances were found in the said parcels. The same were suspected to be narcotic drugs, it was measured and found to be 6.1 kilograms. A certificate of seizure was filled to that effect, it was tendered as exhibit (exhibit P12). The 2nd accused, PW7, PW8, and PW12 signed on the said certificate of seizure as witnesses, while the 1st accused Idd Hassan Chumu signed as the person who was searched.

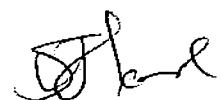
PW5 SP Leonidas Ng'ende the former OCS of KIA Police Station testified to the effect that on 03/3/2013 the 1st accused and all the seized items belonging to him were transferred to the office of the RCO at Moshi where a handing over was done, whereas PW6 Inspector Mahija represented the RCO (PW11 SACP Ramadhani Ng'anzi). PW11 verified the exhibits and handing over certificate before handing over the same to D/Sgt Hashimu the exhibit keeper. A handing over certificate which was prepared was tendered before the court as exhibit (exhibit P13). Thereafter, the exhibits were handed over to PW1 D/Sgt Hashim who marked the exhibits and listed them in the exhibit register (exhibit P1). The seized flour like



substances which were suspected to be narcotic drugs were taken by PW1 to the Chief Government Chemist Laboratory Agency for Scientific analysis. The analysis was done by PW3 Machibya Ziliwa Peter who prepared a report (exhibit P11) to that effect. That the said flour like substances weighed 5418.78 grams and that the same were Narcotic drugs known as HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE.

Upon his transfer to Mwanza, on 01/6/2018 PW1 handed over various exhibits which concerned narcotic drugs to PW10 H. 3923 D/C Michael. PW10 stated among other things that, among the exhibits which were handed over to him, included the exhibits in respect of this case. PW10 mentioned four parcels wrapped in khaki envelopes each and marked 'A', 'A1', 'A2' and 'A3' respectively. PW10 stated further that, the said parcels had a case number KIA/IR/35/2013 and Laboratory number LAB/187/2013. Inside the said parcels there were flour substances suspected to be narcotic drugs. The parcels were closed by using a red seal.

PW10 mentioned other exhibits which were handed over to him to be one dark blue bag (exhibit P9) which had various things including a small black bag which had staff shoes and one black plastic bag. He said that the said bag had a case tag (exhibit label) KIA/IR/35/2013 and exhibit No. 7/2013. On the said tag there was a name of the suspect Idd Hassan Chumu. The bag had the words "Japan Express." PW10 also mentioned an electronic air ticket of Idd Hassan Chumu (exhibit P4) and a passport of the 1st accused (exhibit P2)



PW10 identified the handing over document which they signed with Sgt Hashim (exhibit P3), exhibit P9 the dark blue bag, exhibit P5 to P8 (the four parcels in khaki envelopes), a passport of the 1st accused Idd Hassan Chumu (exhibit P2), exhibit P1 (copy of exhibit register) and exhibit P4 (electronic air ticket of the 1st accused).

The 2nd accused was arrested on 04/3/2013 on the basis of his alleged suspicious behaviour on the fateful day. He was implicated through the evidence of PW8 and PW12. Also, a CD of CCTV footage (exhibit P10) of the fateful day was played before the court by PW2 to prove the alleged suspicious behaviour of the 2nd accused.

PW8 testified inter alia that, two days after the incidence, investigators from Moshi went there to investigate the said incidence. PW8 found an IT personnel and all of them headed to the CCTV system room to observe what was on the footage. Each of them, saw what had transpired on the CCTV footage. PW8 said that, usually a security officer is supposed to settle at the station where he is assigned. From the footage, PW8 discovered that Ephraim Mmasa (2nd accused) was moving around three times which in their profession they call it suspicious behaviour. Another thing was that if a bag is suspected, they read the name tag and the name of the suspected passenger is announced in the Public Announcement System.

PW8 stated further that, in this case the 2nd accused Ephraim was sent to the Public Announcement System but the same was not announced. When the 2nd accused came back, he was sent for the second time, that's when he came back with a suspect. That, he did not know how the 2nd accused managed to identify the suspect without announcing. That, what PW8



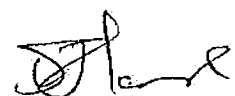
witnessed from the CCTV cameras was the suspicious behaviour of the 2nd accused Ephraim. He added that, the suspect whom he found at the HBS when he arrived there, is the same passenger who was seen in the CCTV camera being taken by the 2nd accused from the passengers' lounge.

PW8 also informed the court that when the Airline is informed that a certain passenger won't be able to travel, the Airline staff collects the boarding pass and luggage tag of that particular passenger for the purpose of offloading that passenger.

To substantiate the weight and value of the alleged narcotic drugs, PW9 (Christopher Shekiondo) testified before the court and tendered a Certificate of Value of Narcotic Drugs and Psychotropic Substances (exhibit P14). PW9 said that by then one gram of heroin was valued at Tshs 45,000/=. Thus, in order to find value of 5418.78 grams of heroin, 5418.78 grams were multiplied by 45,000/= and got Tshs 243,845,100/=.

In proving that the 2nd accused wrote a note to PW12 Dastan Daudi, the samples of the handwriting of the 2nd accused together with a piece of newspaper alleged to have been written by the 2nd accused **"KAKA PLEASE ACHA HUO MZIGO"** were taken to the Forensic Bureau Handwriting expert for examination and a report on the same (exhibit P15) was tendered by the investigator PW1 D/S.Sgt. Hashimu. Exhibit P15 shows that the collected handwriting samples of the 2nd accused match with the handwriting on a piece of newspaper.

On the issue of chain of custody, among other things, those who were responsible as exhibit keepers (Thus, PW1 and PW10) testified before the court and a handing over certificate of exhibit registers and various exhibits was tendered before the court (Exhibit P3). In addition, PW4,

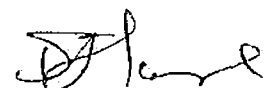


PW6 and PW11 who also dealt with the alleged narcotic drugs gave their testimonies before the court as already stated herein above.

In their defence, in short, the accused persons denied to have committed the offence. The first accused denied to have admitted that the suspected bag belonged to him. He said inter alia that on 2/3/2013 while at Kilimanjaro International Airport at the Departure Lounger (waiting lounge) after he had complied to all procedures, he was followed by one woman whom he did not know. The said woman required the 1st accused to give her his passport after introducing herself as a security officer of KIA. The 1st accused gave his passport to her. She looked at the passport of the 1st accused and looked at the 1st accused. Then, she returned the passport to the 1st accused and ordered him to follow her. The 1st accused complied to the order of the said woman who took him to the HBS room.

The 1st accused stated further that he had never seen exhibit P9 as at the HBS room he found a silver bag which he did not know the owner. He said that, on that day he had checked in a bag made of black cloth which had some of his personal effects and beads as souvenirs. The said black bag had a tag which had his name. Another luggage tag was attached to his boarding pass which he had. The 1st accused also told this court that, his boarding pass together with his luggage tag, his ticket and passport were taken by WP D/Cpl Janeth a police officer (PW4). That, they never allowed him to show them his checked in bag and he did not witness a bag being opened at KIA.

The 2nd accused stated among other things that all the movements of which he is suspected were normal in the course of performing his duties and that some of the movements he was attending calls of nature.



Concerning the piece of paper which the 2nd accused wrote to PW12, the 2nd accused alleged that he did so because PW12 wanted to unwrap the suspected baggage while he was not authorised to do so. The second accused produced before the court a letter from his employer, working time table of Security Officers of March, 2013, A report prepared by him about the incident and Standard Operating Procedures of the HBS as exhibits (exhibit D1, D2, D3 and D4 respectively), to support his defence.

At the end of the defence case, the learned counsels of both parties were given an opportunity to make their final submissions.

In his final submissions Mr. Magafu for the 1st accused stated among other things that there was no proof that the 1st and 2nd accused committed the offence jointly or conspired to commit the offence of Trafficking in narcotic drugs. He questioned the credibility of the evidence of PW12 and exhibit P12. Also, the learned counsel was of the view that in the absence of a boarding pass and luggage tag possession of the suspected bag by the 1st accused was not proved.

Mr. Modestus Njau learned counsel for the 2nd accused submitted among other things that the 2nd accused was the one who seized the suspected bag and that no evidence was adduced to prove that the 2nd accused was travelling. That, there were old grudges between the 2nd accused and the family of his supervisor David Msami (PW8). That, evidence of the prosecution is manifestly unreliable.

In his final submissions, Mr. Kassim Nassir learned State Attorney averred inter alia that the prosecution had managed to prove the offence against both accused persons beyond all reasonable doubts. He said that they had paraded direct evidence showing that both accused persons did traffic



narcotic drugs. That, first they had proved that the bag which is exhibit P9 the property of the 1st accused was found with exhibit P5 to P8.


Second, that they had proved that the 2nd accused Ephraim Mmasa tried to aid the 1st accused to pass the suspected bag within Kilimanjaro International Airport but he did not succeed. That, even the request of the 2nd accused to be shifted from gate No. 5 to the HBS proves that he is guilty.

Third, Mr. Kassim submitted that they had proved that what was found in the bag exhibit P9, the four parcels, were narcotic drugs namely heroin hydrochloride. The same was proved through the evidence of PW3 Machibya Ziliwa Peter the Government Chemist and exhibit P11

Fourth, that the prosecution had proved that exhibit P5 to P8 were not interfered from the point of seizure at the Police Station to the point when the same was taken to the Government Chemist.

Concerning the contradictions and inconsistencies on part of prosecution case, it was submitted that the same do not extend to the root of the case and that the prosecution gave explanation for any contradiction or inconsistency raised. Reference was made to the evidence of PW4 and **section 39 of the CPA** which prescribes items which should be seized are those which can be used as exhibits only.

On the issue of failure to tender a boarding pass and luggage tag as exhibits, it was submitted that PW5 gave an explanation to the effect that when one postpones to travel, such documents have to be returned to the airline. That, even in absence of a boarding pass and luggage tag there is no doubt that the seized bag belongs to the 1st accused Idd



Hassan Chumu; as PW4, PW7, PW8 and PW12 stated that the said bag had a tag of Idd Hassan Chumu.

Regarding the issue that the charge sheet was defective, Mr. Kassim referred to **section 22 (b) of the Drugs and Prevention of Illicit Trafficking of Drugs Act** (supra), which provides that anyone who aids another person or have tried to assist another person to commit an offence under the cited law may be charged as a principal offender. Thus, it was correct to charge the 2nd accused with the offence of Trafficking in narcotic drugs.

From the outset, according to the evidence of both parties it is not disputed that the 1st accused was travelling on the fateful day, his passport and electronic ticket (exhibit P2 and P4) are relevant. Also, it is not disputed that, on the date of incidence the 2nd accused was on duty as a Security officer. The fact that, the 2nd accused was shifted from Gate No. 5 to the HBS after he had requested the shift in charge David Msami (PW8) was also not disputed. That, the 2nd accused had reported to PW8 David Msami that there were minerals which were intended to be smuggled by a Thailand citizen was agreed by both parties.

It is trite law that the prosecution is obliged to establish through evidence all the ingredients of the offence charged. In this case, the ingredients of the offence of trafficking in Narcotic Drugs are; *presence of substances which have to be proved to be narcotic drugs, weight and value of the narcotic drugs must be proved, possession of the said narcotic drugs by the accused persons and proof that the narcotic drugs were being trafficked by the accused persons.*



Another issue is that the 2nd accused is implicated on the basis of circumstantial evidence. As a matter of law, in order to ground conviction on circumstantial evidence, the same must be incapable of more than one interpretation. Thus, the issues for determination in this case are:

1. *Whether the suspected flour substances were proved beyond reasonable doubts that the same were narcotic drugs namely HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE; as well as the weight and value of the same.*
2. *Whether exhibit P9 (dark blue bag) together with the seized narcotic drugs (the four parcels) was owned by the accused persons and whether the same was being trafficked.*
3. *Whether circumstantial evidence against the 2nd accused person is incapable of more than one interpretation*
4. *Whether chain of custody of the seized narcotic drugs was not broken.*

Starting with the first issue *Whether the suspected flour substances were proved beyond reasonable doubts that the same were narcotic drugs namely HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE; as well as the weight and value of the same;* the same was proved by PW3 (Machibya Ziliwa Peter) who examined the alleged suspected substances and prepared a report (exhibit P11) to that effect. That the said flour like substances weighed 5418.78 grams and that the same were Narcotic drugs known as HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE. Exhibit P11 which is a report which establishes that the suspected flour substances were narcotic drugs known as heroin hydrochloride, was not objected by the learned defence counsels during the hearing. The weight and value of the narcotic drugs

was proved through the testimony of PW9 Christopher Shekiondo who assessed the value of the narcotic drugs and produced a report (exhibit P14) to substantiate the same. Exhibit P14 was also not objected by the defence counsels. Since exhibit P11 and P14 were not objected, thus, on the basis of evidence of PW1, PW3, PW4, PW9 and Exhibits P5, P6, P7, P8, P11 and P14, I am of settled opinion that the fact that the seized suspected flour substances were narcotic drugs namely HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE has been proved beyond reasonable doubts.

On the 2nd issue *Whether exhibit P9 (dark blue bag) together with the seized narcotic drugs (the four parcels exhibit P5 to P8) were owned (possessed) by the accused persons and whether the same were being trafficked;* PW4 WP CPL Janeth testified among other things that she asked the 1st accused whether the bag belonged to him the 1st accused admitted that he was the owner of that bag. PW12 also stated before the court that the 1st accused admitted that he was the owner of exhibit P9. PW12 also checked the travelling documents of the 1st accused and verified that the same matched with the luggage tag which was on exhibit P9. It was also alleged by the prosecution that the said bag (exhibit P9) was locked by using numbers which were unlocked by the 1st accused when he was called at the HBS. In his defence, the 1st accused denied to have admitted that exhibit P9 belonged to him.

It is trite law that the accused's story does not have to be believed, but only to raise reasonable doubts on part of the prosecution as it was held in the case of **Hassan Madenge V.R [1963] EA 211** that:

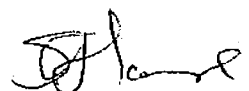


"An accused's story does not have to be believed. He is only required to raise reasonable doubt, that is to say, his explanation must be within the compass of the possible in human terms."

In his final submission Mr. Kassim stated that they had paraded direct evidence showing that both accused persons did traffic narcotic drugs. That, first they had proved that the bag which is exhibit P9 the property of the 1st accused was found with exhibit P5 to P8.

In his final submissions Mr. Magafu for the 1st accused stated among other things that in the absence of a boarding pass and luggage tag possession of the suspected bag by the 1st accused was not proved. With due respect to the learned Senior Counsel, the 1st accused person stated in his defence that he had already checked in and was at the international departure lounge when he was called at the HBS. The 1st accused stated further that his boarding pass attached with a luggage tag, passport and ticket were taken by Cpl Janeth. However, he denied to be the owner of the suspected bag which he found at the HBS. In the case of **Hassan Rashid Gomela v. The Republic, Criminal Appeal No. 271 of 2018 at page 14**, the Court of Appeal of Tanzania at Mtwara held that:

*"We share that view because as we said in **Goodluck Kyando v. Republic** (supra), it is trite law that every witness is entitled to credence unless there are good and cogent reasons to the contrary. In the present case there are no such good reasons to make us disbelieve what PW3, PW6 and PW7 stated in respect of their testimony that they found the appellant in possession of the said motorcycle...."*

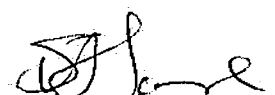


Likewise, in the instant matter, I do not see any reason to disbelieve evidence of PW4, PW7, PW8 and PW12 in respect of the fact that the 1st accused was the owner of exhibit P9 in which exhibit P5 to P8 were seized. Therefore, I am convinced by the story of PW8 that the boarding pass and luggage tag were taken by Qatar Airline staff for the sake of offloading the 1st accused.

On the available evidence, this court is of considered opinion that the prosecution managed to prove that exhibit P5 to P8 and P9 were possessed by the 1st accused. Although in law the accused person has no duty to prove his innocence, in this case the accused did not state why this case was fabricated against him and not any other passenger. That could have assisted to raise doubts on part of prosecution. Otherwise, evidence of PW4, PW7, PW8, PW12 (eye witnesses) and exhibit P2 (passport of the 1st accused), P4, P5, P6, P7, P8, P9 and P12 suffice to prove possession of the seized narcotic drugs by the 1st accused.

On the issue whether the seized narcotic drugs were being trafficked by the 1st accused, due to the fact that the 1st accused do not dispute that he was travelling on the material date, it is beyond any shadow of doubt that the seized drugs were being trafficked by the 1st accused.

Regarding the 2nd accused, it was alleged by defence counsels that since there was no evidence showing that the 2nd accused was travelling on the fateful date, the charge sheet was defective as it did not disclose that the accused persons committed the offence jointly and together, or that the 2nd accused conspired with the 1st accused to commit the offence charged. With due respect to the Defence counsels, **section 24 of Cap 95 R.E 2019** provides that:



"24. Notwithstanding anything contained in any other written laws, any person who-

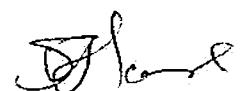
- (a) Conspires with another person to commit;*
- (b) Solicits, procures, aids, conceals or attempts to solicit, incite, aid, alert or conceal any other person to commit;*
- (c) Causes, procures or attempts to cause or procure the commission of an offence under this Act;*
- (d) Is otherwise directly or indirectly concerned in the commission of an offence under this Act,*

May be charged with in all respects as if he was the principal offender. "Emphasis supplied

Section 24 (a) to (d) of Cap 95 R.E 2019 is the replica of **section 22 (b) of Cap 95 R.E 2002** which was cited by the learned State Attorney.

Thus, the prosecution was right when it charged the 2nd accused jointly with the 1st accused as if he was also travelling and trafficking the alleged narcotic drugs on the basis of circumstantial evidence that he was aiding the 1st accused.

Concerning the third issue *Whether circumstantial evidence against the 2nd accused person is incapable of more than one interpretation;* as noted herein earlier, the 2nd accused is implicated on the basis of his alleged suspicious behaviour which manifested on the fateful date. It has been alleged by the prosecution that on the material date the 2nd accused asked his supervisor PW8 to shift him from Gate No. 5 to the HBS room. That, the 2nd accused was seen on the CCTV footage moving around three times which are termed as suspicious movements. Also, it was alleged by PW12



that the 2nd accused tried to aid the 1st accused to traffic the alleged narcotic drugs.

When cross examined by Mr. Magafu the learned Defence counsel, PW8 admitted that his family had grudges with the 2nd accused, whereby the sister of PW8 and his son were also employed by KADCO. The said son of the sister of PW8 was suspected of smuggling lion teeth and his case was investigated by the 2nd accused who was a police officer by then. In the circumstances, apart from the alleged suspicious behaviour of the 2nd accused, possibly he might have been implicated on the basis of old grudges with the family of PW8. Even the words which were written on a piece of newspaper by the 2nd accused (exhibit P15), might have meant what the 2nd accused said before this court. That, PW12 wanted to unwrap the suspected bag (exhibit P9) while he had no authority to do so. Thus, after forbidding him orally unsuccessfully, the 2nd accused decided to forbid PW12 by writing on a piece of paper. In the case of **Sikujua Idd v. Republic, Criminal Appeal No. 484 of 2019**, the Court of Appeal of Tanzania held inter alia that:

*"This Court has on several occasions restated that in a criminal case based purely on circumstantial evidence, **that evidence must irresistibly point to the accused's guilt and exclude any other person.**"* Emphasis added

In this case, apart from evidence of PW12, even PW8 seemed to be not certain whether the 2nd accused had an evil intention when he asked him to be shifted to the HBS room on allegation that he had received information that there was a Thailand citizen who intended to smuggle minerals. PW12 alleged that the 2nd accused was urging him to let the



suspected bag proceed on board, however, PW7 Mary Mosha who was in the same room did not hear the 2nd accused urging PW12 to let the suspected bag pass. In short, all the suspicious behaviours which were alleged by the prosecution do not irresistibly point to the guilt of the 2nd accused due to the fact that the 2nd accused had previously investigated the case of PW8's nephew. Apart from that, PW12 seemed to be unreliable witness against the 2nd accused as he seemed to be overwhelmed by irrelevancies and rumours rather than the truth which he had sworn to speak before the court.

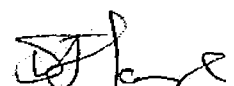
In the case of **Adinardi Idd Salimu and another v. Republic, Criminal Appeal No. 298 of 2018, at page 24**, the Court of Appeal of Tanzania at Arusha held that:

"It is settled law that suspicion however strong is not enough to find the accused guilty of an offence charged. Instead, suspicion entitles an accused to an acquittal, on a benefit of doubt."

It is on that basis that this court finds the prosecution to have failed to prove the case against the 2nd accused, who as a matter of law deserves an acquittal on a benefit of doubt, as it was held in the case of **Adinardi Idd Salimu** (supra).

On the fourth issue *Whether chain of custody of the seized narcotic drugs was not broken*; In narcotic drugs cases, the prosecution is duty bound to prove beyond reasonable doubts that chain of custody of the seized narcotic drugs was not broken in order to guarantee fair trial to both parties. The prosecution must parade all witnesses whom the exhibit passed in their hands and documents which dealt with transaction of that exhibit should be tendered to support testimonies of the said witnesses.

In his final submissions Mr. Kassim the learned State Attorney stated inter alia that the prosecution had proved that exhibit P5 to P8 were not interfered from the point of seizure at the Police Station to the point when the same were taken to the Government Chemist. Evidence on the record is to the effect that, the suspected narcotic drugs were seized by PW4 Cpl Janeth who conducted the search after being ordered by PW5 SP Ng'ende who was the OCS of KIA Police Station. A Certificate of Seizure (exhibit P12) was tendered before the court. Then, the OCS handed over the suspect together with the exhibits and case file to PW6 Inspector Mahija who represented the RCO (PW11 SACP Ramadhani Ng'anzi). A handing over certificate which was prepared was tendered before the court as exhibit (exhibit P13). The RCO verified the exhibits before handing over the same to PW1 Sgt Hashim the exhibit keeper. Sgt Hashimu labelled the exhibits and listed them in the exhibit registers. Thereafter, the RCO assigned PW1 to take the suspected narcotic drugs to the Chief Government Chemist's laboratory at Dar es Salaam by flight. PW1 went to KIA by escort to and from. At Dar es Salaam the suspected narcotic drugs were handed over to PW3 who labelled the suspected narcotic drugs, analysed the same and prepared a report (exhibit P11). When PW1 was transferred, he handed over the exhibits to PW10. Exhibit P3 was tendered before the court to prove the said handing over. PW10 identified the exhibits which were handed over to him through the labels which were done by PW1 and PW3. The parcels of the suspected narcotic drugs were closed by using a red seal. Thus, they could not temper with the said exhibits. In that regard, there was no time when the seized narcotic drugs were misplaced.



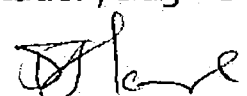
Mr. Majura Magafu the Senior Defence Counsel disputed the authenticity of the Certificate of Seizure (exhibit P12), with respect, the learned Senior counsel misdirected himself in respect of the said exhibit. The said exhibit was duly issued by PW5 to PW4 who effected the search in the presence of witnesses who signed on exhibit P12. The allegation of the 1st accused that he was just ordered to sign the said documents so that he could time his flight is unfounded as it was already known that he could not travel and Qatar Airline staff had already been informed that he would not travel.

In the case of **Zainabu d/o Nassoro @ Zena V. Republic, Criminal Appeal No. 348 of 2015** at page 25 it was held that:

"It seems to us, decisions of the court reiterating the duty to ensure the integrity of chain of custody, provisions of section 39 of the Anti-Drugs Act which require the police officers who seize suspected drugs to make a full report of all the particulars of such arrest or seizure to his immediate official superior, the Police General Orders, and the HANDBOOK FOR THE POLICE OFFICERS, 2010 are all designed to ensure both the prosecution and the accused persons of the procedural justice in terms of fairness."

In the upshot, since all witnesses who handled the suspected narcotic drugs testified before the court and all documents in respect of the said narcotic drugs were tendered before the court, I am satisfied that chain of custody of the seized narcotic drugs in this case was not broken.

The Gentleman assessor and Ladies Assessors who sat with me at the trial were of the opinion that the case against the 2nd accused was not proved beyond reasonable doubts. Having found that circumstantial evidence against the 2nd accused is capable of more than one interpretation, I agree




with the court assessors that the case against the 2nd accused Ephraim Mmasa has not been proved. I therefore acquit him accordingly.

Regarding the 1st accused, as I have already found out herein above, the prosecution has proved all the ingredients of the offence of Trafficking in Narcotic Drugs against him on the required standard, thus beyond reasonable doubts.

In the event, I convict the 1st accused Idd Hassan Chumu with the offence of Trafficking in Narcotic Drugs contrary to **section 16 (1) (b) of the Drugs and Prevention of the Illicit Traffic in Narcotic Drugs Act, Cap 95 R.E 2002**; as amended by **section 31 of the Written Laws Miscellaneous Amendment) Act No. 06 of 2012** as charged.

Dated at Moshi this 20th day of June, 2022.


S. H. SIMFUKWE

JUDGE

20/06/2022