

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CRIMINAL SESSION CASE NO. 42 OF 2016**

**REPUBLIC**

**VERSUS**

**SALEHE RAJAB @ SALEHE**

**JUDGMENT**

25/05/2022 & 01/06/2022

**SIMFUKWE, J.**

The accused person Salehe S/O Rajabu @ Salehe stand charged with the offence of Trafficking in Narcotic Drugs contrary to **section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95 R.E 2002 as amended by section 31 of the Written Laws (Miscellaneous Amendment) Act No. 6 2012**. It has been alleged by the prosecution in the particulars of offence that, on 11<sup>th</sup> day of April, 2015 at Moshi Police Station area, within the Municipality of Moshi in Kilimanjaro Region, the accused was found Trafficking 89 kilograms of Narcotic Drugs namely Khat commonly known as **Mirungi**, valued at Tshs Four Million four hundred and fifty thousand only. (4,450,000/). The accused person denied to have committed the offence.

The prosecution called a total of ten (10) witnesses and produced nine (9) exhibits in order to prove their case against the accused person. On



the other hand, the accused person defended himself on oath, he did not call any witness nor tender any exhibit.

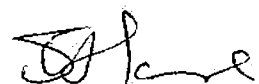
During the trial, the Republic was represented by Ms Tamari Mndeme and Mr. Ignas Mwinuka learned State Attorneys while the accused person was defended by Ms Janeth Alphonse learned counsel.

**PW1 F.1157 Detective Sargent Hashimu Ally Mafuru** testified among other things that on 11/4/2015 around 10:15am he was at the Central Police station at Moshi when an informer phoned and informed him that there was a bus with registration No. T.143 CYY which was coming from Same on its way to Singida which had Narcotic Drugs and that he should go there for further action. PW1 informed the head of Drugs Department and D/S. Sgt Mtoo who told PW1 that the said bus had been stopped by police officers. After few minutes, the said bus under police escort was driven to Moshi Central Police Station. Police officers descended from the bus; two police officers entered in that bus and conducted search. Then, Cpl Rukia came out of the bus with four bags (one big bag and 3 small bags) and four passengers were taken out of the bus. Inspector Ezekiel and other police officers were outside the bus. The passengers who were taken out of the bus were two ladies and two men who were taken in front of the bus. They were asked by Inspector Ezekiel Midala (PW6) who were the owners of those bags. It was alleged by PW1 that, it was at that time when the accused person herein admitted to be the owner of a big bag, and the other three bags were found to be possessed by other suspects who had another case. That, the bag of the accused herein was maroon in colour written on it "Omica." Then, the accused was instructed to open the zip of his bag in the presence of Inspector Midala, the driver Elihaki Gabriel (PW9), Elizabeth the passenger



and PW1. When the accused opened that bag, they found green leaves which were tied in bundles. They found a scale and measured the said bag together with its contents, it weighed 89 Kgs. The said leaves were suspected to be Khat substances commonly known as Mirungi.

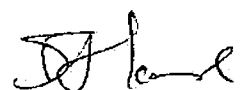
PW1 stated further that they filled two certificates of Seizure. The listed seized items were: one bag, leaves of Khat, one mobile phone of the accused and the bus ticket. Thereafter, the accused was arrested and all the exhibits were taken to the strong room and Inspector Midala handed over the exhibits to PW1 who filled the same in the exhibit register, PF 16. That, the exhibit room had two keys, one was kept by PW1 while the second key was kept by the Regional Crimes officer. PW1 labelled the said bag with Exhibit Register No. Moshi/IR/3150/2015 and sealed the bag. On 28/4/2015, the Regional Crimes Officer instructed PW1 to prepare the said exhibit the bag which had Khat leaves. PW1 handed over the bag to police officer No. F. 1219 D/ Cpl Fredrick (PW8) after labelling it as Exhibit A for identification at the Chief Government Chemist office. The same was recorded in the exhibit register to show that the said exhibits were taken to the Chief Government Chemist office at Arusha by D/Cpl Fredrick (PW8). On the same date in the evening, D/Cpl Fredrick came back to Moshi and handed back to PW1 the said exhibit including the bag which was wrapped with a sole tape around the zip and a rope on top of it. A Lab Number from the Chief Government Chemist had been added on the said exhibit as NZ37/2015 signed by the Chemist Officer. On the head of the zip, there was a seal with a stamp dated 28/4/2015. Then, PW1 entered the said information in the exhibit register and again D/Cpl Fredrick signed. Thereafter, the exhibit was kept in the strong room fixed with the previous exhibit register tag.



On 05/7/2017 around 09:00am, PW1 was instructed by the Regional Crimes Officer to issue the said exhibit so that it could be taken to the High Court for trial. The exhibit was given to D/C Simba.

PW1 identified the Exhibit Register before the court. He managed to identify his handwriting, reference number IR/3150 of 2015 and the name of the accused Salehe Rajabu Salehe. The certified copy of the Exhibit register was admitted as exhibit P1. The maroon bag containing bundles of Khat substances was admitted as exhibit P2, while the Khat substances were admitted as exhibit P3.

**PW2 Kenneth James Kaseke**, his testimony was that from May, 2014 to 20/2/2017 he was the Commissioner of the Drugs Control Commission. His duties were to administer, control the use of illicit drugs and assessment of the value of illicit drugs. That, on 04/9/2015 while in his office, PW2 received a letter with reference number MOS/3150/2015 from the Regional Crimes Officer of Kilimanjaro requesting him to make assessment of the value of illicit drugs known as Khat weighed 89 Kgs. The name of the accused was Salehe Rajabu Salehe. The said letter was attached with the report from the office of the Chief Government Chemist which also described the said illicit drug to be khat weighed 89 Kgs. That, according to the data base of 2011 – 2015 the value one kilogram of khat was Tshs 50,000/. Thus, PW2 multiplied 89 kilograms by 50,000/ and got Tshs 4,450,000. Thereafter, he prepared a Certificate of Value of Narcotic Drugs and psychotropic substances which had the police file reference number MOS/3150/2015, weight of the drug 89 kgs, type of the drug (khat), dated 04/9/2015 and signature of PW2.

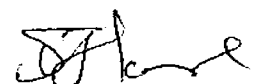


PW2 identified the Certificate of Value of Narcotic Drugs which he had prepared by his handwriting and public seal. The same was admitted as exhibit P4.

**PW3 Kaijunga Trifon Blass** a Government Chemist stationed at Arusha stated that on 28/4/2015 he was in his office when his secretary told him that there was one police man who had brought the exhibit. PW3 went to the reception and found the police officer Fredrick who had illicit drugs in the maroon bag locked with a police seal. PW3 opened that bag and found substances of green leaves suspected to be khat. He measured the said substances on a scale and found the same to be 89 kgs. That, the said leaves were wrapped in small bundles, thus PW3 took one leaf from each bundle as sample and formed one bundle which he did put in an envelope and labelled it as NZ37 of 2015 as laboratory number. The rest of the leaves were returned in the bag which was then wrapped in the sole tap and sealed. Then, the green leaves in the envelope were taken to the Chief Government Chemist at Dar es Salaam by PW3 who handed over the samples to one Elias Mulima (PW10) together with a covering letter requesting for laboratory examination of the said exhibit. PW10 labelled the said samples as exhibit 351 of 2015.

The handing over document which was used to hand over the exhibit to PW3 was identified by PW3 through his name, signature and date. The same was admitted as exhibit P5. PW3 also identified the bag which he received on 28/4/2015 by a number which he wrote on it, the stamp on it, his signature and manilla rope.

**PW4 Ramadhani Mussa Msuya** testified that he was a conductor of Kilenga bus which travels from Ndungu in Same District to Singida region.



That, on 11/4/2015 he was on duty when they started their journey around 06:00am from Ndungu. They reached at Makanya around 08:40am. When they moved from Makanya bus stand a distance of about ½ km, they saw one passenger who stopped the bus and he had a cloth bag, maroon in colour. The said passenger boarded the bus and placed his bag at the staff carrier. PW4 issued a ticket to the said passenger for seat No. K4. That, the said passenger told PW4 that he was heading to Babati, thus he was charged a bus fare of Tshs 16,000/=, but the passenger bargained that he had Tshs 15,000/ which was accepted by PW4. PW4 alleged that on the ticket which was issued to the said passenger, he wrote the name of the passenger, the place where he was coming from and where he was going and the bus fare.

PW4 identified the ticket which he had issued to the accused person by his handwriting. The same was admitted as exhibit P6.

PW4 testified further that, they proceeded with their journey to Moshi Bus stand. When they reached at Changbay area, a police officer stopped the bus and told the driver to turn the bus back to Moshi Central Police Station, the driver obeyed that order. At Moshi Police Station, the police said that they wanted to search the said bus, whereby one police woman and one police man entered in the bus and searched the bags of the passengers. Then, four bags were taken out of the bus by a police woman. Two bags were rack sack bags, the third bag was black in colour and the fourth bag was maroon in colour. Also, police officers took out four passengers who had sat near the said bags. Two of them were ladies and the other two were men. Thereafter, police officers asked those passengers which bags belonged to them. The passenger who was picked at Makanya said that the maroon bag belonged to him. The said maroon

bag was searched, inside it they found bundles of green leaves which were measured on a scale.

PW4 identified the accused person in the dock as the passenger who was picked from Makanya who admitted at Moshi Central Police Station to be the owner of the maroon bag. PW4 also identified the said maroon bag (exhibit P2).

It was concluded by PW4 that, thereafter, they were allowed to proceed with their journey while the accused person and other suspects were retained at the police station. The statement of PW4 in respect of what happened was recorded on 14/4/2015 at Moshi.

**PW5 Christopher Augusto Onyango** a Zonal Manager of the Chief Government Chemist office at Arusha, stated that on 15/7/2015 he was in his office when he wrote a letter to the Regional Crimes Officer of Kilimanjaro informing him the results of the samples of illicit drugs with Lab No. NZ37/2015 of Arusha and Lab No. 351/2015 of Dar es Salaam, which were taken to his office at Arusha from the office of the Chief Government Chemist. PW 5 sent the said letter to the Regional Crimes Officer of Kilimanjaro by using the office motor vehicle. The said letter had an attachment of a letter of results and results of examination of illicit drugs from the Chief Government Chemist at Dar es Salaam.

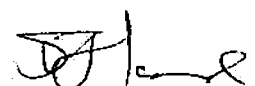
PW5 identified a letter which he wrote on 15/7/2015 through his name, stamp and the results of the examination of illicit drugs attached to it from the Head Quatres at Dar es Salaam. The said letter was admitted as exhibit P7.

**PW6 Inspector Ezekiel Midala** testified inter alia that he was a police officer stationed at the office of the RCO as Senior Investigator. That, on

11/4/2015 around 10:30am, PW6 was at the Central Police Station when he was assigned to inspect a bus of Kilenga company with registration number T.143 CYY make TATA. Prior to that, in the morning PW6 had received information from the informer that the said bus carried illicit drugs. Thus, the bus was stopped at Changby area in Moshi and taken to Moshi Central Police Station where PW6 was in the company of sergeant Hashim, Cpl Rupiana, W.P Rukia and D/ S. Sgt Mtoo. PW6 directed Cpl Rupiana and W.P Rukia to enter inside the said bus and conduct a search. The conductor and the driver of the said bus were outside the bus. The said police officers came out of the bus with four bags, one big bag was maroon in colour, the other two small bags were pink and dark blue and the last bag was black in colour. Then, PW6 ordered the two police officers to enter inside the bus again and call passengers who were sitting close to those bags. Two ladies and two men went out of the bus. They were asked whether they were owners of the said bags, one of them who was a man, told them that the maroon bag belonged to him. That, the said passenger was Salehe Rajabu from Makanya.

PW6 went on to state that, they opened the bag of the accused person and found khat leaves which were wrapped by banana plant leaves. The said bag together with the khat leaves in it were measured and found a total of 89 kgs. Thereafter, a Certificate of Seizure was recorded in which the khat leaves and the said bag were listed among the seized items. The same was done in the presence of some other passengers including Gadiezer Laizer, the accused person, Elibariki Waziri the driver of the said bus and Elizabeth Msafiri.

PW6 identified the Certificate of Seizure which he prepared. It was admitted as exhibit P8.



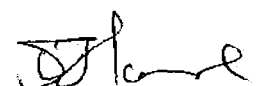


PW6 stated further that, in the seizure note he recorded what was seized in the bag suspected to have illicit khat drugs which belonged to the accused person. That, PW6 handed over the said bag which had green khat leaves to D/Sgt Hashimu Mafuru. Thereafter, the accused person was arrested. He was searched and found with one cellular phone of itel and one bus ticket.

PW6 identified the bag exhibit P2 and the accused person who was in the dock.

**PW7 WP 9054 D/Cpl Rukia Hamidu Kambanga** told the court that she was a police officer stationed at Moshi Central Police station at Anti Robbery department. That, on 11/4/2015 around 10:30am, PW7 was at the Central Police Station in the company of Inspector Midala, Sergeant Hashim, Cpl Rupiana and passengers of Kilenga bus which was on its way to Singida. They were there for inspection of the said bus and the in charge was Inspector Midala, who directed PW7 and Cpl Rupiana to enter inside the said bus and conduct or search. They entered in the said bus together with the conductor of the bus. Inspector Midala and other police men were outside the bus while passengers were inside the bus. They were searching by sniffing the bags of passengers in order to find khat substances. Above the last seats on the left side, smell of khat substance was sniffed from a maroon bag which was taken out of the bus. They continued to search the bus on the same left side and found other three bags, one was big and black in colour, and the other two were rack sacks pink and dark blue in colour.

PW7 testified further that when he was taking the maroon bag, one male passenger who sat on that side asked him why PW7 was taking his bag,



PW7 told him that the bag was taken in order to be searched. Thus, PW7 took the four bags and told all passengers whose bags were on top of them to go out of the bus. Two males and two females went out of the bus. Inspector Midala asked them whether the said bags belonged to them and the accused person herein pointed at the maroon colour bag and said that the same belonged to him. So, he was kept aside with his bag. The two females told police officers that their bags were inside the bus, thus they took those bags outside the bus, the same were searched but the police officers did not find any khat substance in them. The two ladies were allowed to enter inside the bus. Then, the accused person was arrested together with other passengers. The accused told PW7 that his name was Salehe Rajabu. Cpl Rupiana opened the bag of the accused person and found green leaves of khat which were wrapped with banana leaves.

PW7 identified exhibit P2 the bag and the accused person in the dock.

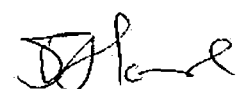
**PW8 F.1219 D/Cpl Fredrick** stated that he was a police officer at the Regional Crimes' Officer in Drugs Prevention unit under the leadership of Inspector Ezekiel Midala. He said that on 28/4/2015 at about 11:30am he was on duty when he was required to see the RCO. The RCO gave PW8 a letter so as to take it to the Zonal office of the Chief Government Chemist. That, the RCO also ordered D/Sgt Hashim to give PW8 the exhibit which would be delivered to the Zonal Office of the Chief Government Chemist. PW8 went with D/Sgt Hashimu to the strong room where Hashim opened the bag which he said had suspected khat. Hashim sealed the said bag and tied it with a rope and labelled it as exhibit A and wrote a reference number on it as MOSHI/IR/3150/2015. PW8 signed on the exhibit register. Thereafter, PW8 was given a police vehicle which took

him to Arusha where he was received by PW3 Kaijunga Blass a Chemist Officer. PW3 received a letter from PW8 and opened the bag in the presence of PW8. That, PW3 took out the bundles of suspected khat substances and measured the same on the scale, he found 89 kgs of suspected khat. Then, PW3 filled the form and labelled the exhibit as NZ37/2015 and signed on it.

PW8 stated further that PW3 took one sample from each bundle and wrapped the samples in one bundle and kept the same in the khaki envelope. The rest of the bundles were kept back in the maroon bag, which was then wrapped with sisal rope together with a sole tape. Then, a tag was attached to the said bag which PW3 stamped with the office seal as well as at the connection of the zip of the bag. Then, PW3 gave back the bag to PW8. PW8 left to Moshi where he handed back the exhibit to Sgt Hashim and signed in the exhibit register.

PW8 identified the exhibit register in which he had signed and the maroon bag which he took to the Chief Government Chemist at Arusha Zonal Office.

**PW9 MR. ELIHAKI WAZIRI** a bus driver of Kalenga Bus Service with registration number T.143 CYY, stated that on 11/4/2015 they departed at Ndungu around 06:00am and arrived at Moshi at about 10:30am. When they arrived at Moshi Bus Stand some passengers dropped, then they proceeded with the journey but when they reached at Chang'bay area the police stopped their bus and ordered PW9 to drive the said bus to Moshi Central Police Station. Two police officers entered in the bus and came out with four bags. PW9 was called and shown the maroon bag which was taken from his bus which had green leaves. The said bag was weighed



and other passengers were called to witness in the presence of the accused person. That, the accused person admitted that the said bag belonged to him. Then, PW9 was required to sign on the Certificate of Seizure together with other passengers.

PW9 identified the Certificate of Seizure which he signed before they proceeded with their journey and left two male passengers at Moshi Police Station.

**PW10 Mr. Elias Mulima** a Chemist Officer from Dar es Salaam Chief Government Chemist, stated that on 08/05/2015 he was on duty when he received a sealed envelope from Arusha Zone which was taken there by PW3 Kaijunga Blass. The said envelope had samples of illicit drugs known as khat. PW10 registered that exhibit as 351 of 2015. Thereafter, PW10 conducted a test analysis and examination of suspected khat. The same was done in the laboratory by using a machine known as KHAI performance liquid chromatography. The results of the said examination were that the said substance had chemical known as cathinone a chemical which cause a person to be intoxicated and damage the brain. Then, PW10 prepared a laboratory report. The said report was tendered before the court and it was admitted as exhibit P9.

That marked the end of prosecution case. The court ruled out that the accused person had a case to answer. The accused had no witness to call nor exhibit to tender. Thus, he defended himself on oath.

In his defence, the accused denied to have admitted that the suspected maroon bag belonged to him as no independent passenger appeared before this court to prove the same. However, the accused admitted to have seen the bundles of green leaves which were taken from the maroon



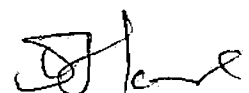
bag, he admitted to have signed on the Certificate of Seizure in the presence of the bus conductor, lady passenger and other police men. Also, the accused admitted to have travelled in the bus in which the bag containing leaves suspected to be narcotic drugs were seized.

In his final submissions, Mr. Mwinuka learned State Attorney averred inter alia that the prosecution had managed to prove the offence against the accused person beyond all reasonable doubts. He said that the issue whether the bag was the property of the accused was proved by PW1, PW4, PW6, PW7 and PW9. Concerning chain of custody, the learned State Attorney was of the view that the same was not interfered with, whereas different documents were tendered by the prosecution (exhibit P1, P3, P4, P5, P8 P9) and P2 the bag was labelled to prove the same. That the said documents supported testimonies of prosecution witnesses. Mr. Mwinuka also contended that the type of drug, value and weight was proved.

Ms Janeth the learned Defence Counsel, in her final submissions stated among other things that in this case the driver and conductor of the above noted bus (PW4 and PW9) were responsible for the offence but they evaded responsibility. That, PW4 and PW9 had an interest to serve and that their evidence was doubtful.

Regarding chain of custody, it was Ms Janeth's opinion that the same was not properly maintained as it is not shown when the bag (exhibit P2) came from PW2 and went to Inspector Ezekiel Midala (PW6). She said that **section 39 of the Drugs and Prevention of Illicit Drugs Act** (supra) was not complied with.

After summing up to the Gentleman and Ladies Assessors, they had the following opinions:



**The 1<sup>st</sup> Assessor Mr. Lomitu Laizer** opined among other things that he had doubts in respect of the evidence of PW4, the bus conductor and PW9 the driver of the bus in respect of the place where they picked the suspected luggage and the place where the passenger Salehe boarded the said bus. That, the said witnesses alleged that they took a luggage first, then a passenger boarded the bus meaning that the same was done on two different bus stops. The Gentleman Assessor was of the view that the same has raised a lot of doubts to the extent of failing to prove the offence charged beyond reasonable doubts. Concerning the examination done by the Chief Government Chemist, he said that there was no doubt that the seized leaves were proved to be Mirungi. Regarding the bus in which the accused boarded, he said there was no doubt that it was Kalenga bus. That, even the search and seizure done by police officers do not raise any doubt. The only doubt is as raised above in respect of testimonies of PW4 and PW9. It was concluded that the offence charged against the accused person was not proved.

**The 2<sup>nd</sup> Assessor Ms Agnes Mkumbo**, gave her opinion to the effect that her doubt is in respect of the testimony that the accused saw the seized leaves and signed. The Lady Assessor said that she was not sure whether the accused signed to have seen the seized leaves or that the same belonged to him. Also, the Lady Assessor doubted whether the accused admitted that all the four bags belonged to him. She was of the opinion that, on the basis of the doubts she had raised, the offence charged has not been proved.

**The 3<sup>rd</sup> Assessor Ms Mary John** briefly supported the opinions of her fellow Court Assessors that the offence charged have not been proved and thus the accused person is not guilty.



It is a cardinal principle that in criminal cases, the prosecution has the onus to prove the offence charged beyond reasonable doubts. The prosecution is supposed 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 person and proof that the narcotic drugs were being trafficked by the accused person. Lastly it must be established whether chain of custody of the seized narcotic drugs was not broken. The accused has no duty of proving his innocence. His duty is to show doubts in the prosecution case.

According to the evidence of both parties it is not disputed that the bus with registration number T.143 CYY in which the accused person was travelling to Babati was stopped and taken to Moshi Central Police Station where it was searched. It is also undisputed that four bags containing leaves suspected to be narcotic drugs were seized from the said bus. The accused person admitted to have seen the bundles of green leaves which were taken from the maroon bag and he admitted to have signed on the Certificate of Seizure in the presence of the bus conductor, lady passenger and other police men.

In order to establish whether the prosecution proved the offence charged beyond reasonable doubts, the following issues are to be determined:

- 1. Whether the seized leaves were proved beyond reasonable doubts that the same were narcotic drugs namely khat commonly known as **Mirungi**, as well as the weight and value of the same.*



2. *Whether exhibit P2 together with its contents (the maroon bag) was possessed by the accused person and whether the same was being trafficked.*
3. *Whether chain of custody of the seized narcotic drugs was properly established.*

Starting with the first issue, *Whether the seized leaves were proved beyond reasonable doubts that the same were narcotic drugs namely khat commonly known as **Mirungi**, as well as the weight and value of the same;* PW3 Kaijunga Blass a Chemist Officer of Arusha Zone stated that he took the samples of leaves suspected to be khat to Dar es Salaam in the Chief Government Chemist's laboratory where PW10 Elias Mulima examined the said substances. His findings were that the said leaves were narcotic drugs known as khat or commonly known as Mirungi. A report prepared by PW10 was produced before the court (exhibit P9). In order to substantiate the weight and value of the said narcotic drugs, PW2 Kenneth James Kaseke testified to the effect that on 4/9/2015 he measured and assessed the value of 89 kgs of khat. Each kilogram of khat according to the data base of 2011-2015 was valued at Tsh. 50,000/. Thus, PW2 multiplied 89 kgs by 50,000/ Tshs and found Tsh. 4,450,000/. A certificate of Value of Narcotic Drugs was tendered before the court. It was admitted as exhibit P4. On the strength of evidence of PW3, PW2 and PW10 as well as exhibit P4 and P9, the seized leaves were proved beyond reasonable doubts to be narcotic drugs commonly known as Mirungi. The weight and value of the said narcotic drugs was also proved beyond any shadow of doubt. The learned Defence Counsel had no dispute in respect of the first issue. Even the accused person did not challenge the issue that the seized narcotic drugs were khat substances, its weight and value



On the second issue, *whether exhibit P2 together with its contents (the maroon bag) was possessed by the accused person and whether the same was being trafficked*; PW7 stated among other things that when she was taking the maroon bag (exhibit P2) from the bus, the accused person asked him why she was taking that bag. After the accused had been taken out of the bus, when asked by police officers whether that bag belonged to him, he admitted that it was his bag in the presence of PW1, PW4 and PW6. Testimonies of PW1, PW4 and PW6 corroborated evidence of PW7 in respect of the owner of exhibit P2. In his defence, the accused person denied to have admitted that the said maroon bag belonged to him. I am of considered opinion that the defence of the accused person is an afterthought which do not raise any doubt on part of prosecution.

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 **Maruzuku Hamis v. Republic [1997] TLR 1 HC at Mwanza**. The Court of Appeal of Tanzania in the case of **Hassan Madenge V.R [1963] EA 211** (which was cited in the case of **Maruzuku Hamis** at page 3 (supra)) held 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 this case, as I have already stated herein above, the accused's story was just a mere denial which is not within the compass of the possible in human terms.

Concerning the issue whether exhibit P2 and its contents was being trafficked by the accused, since the accused person did not dispute the fact that he was travelling from Makanya to Babati, there is no doubt that

the narcotic drugs which he was found in possession was being trafficked to Babati where he was heading. In proof of the same, the prosecution tendered a bus ticket which was issued by PW4 to the accused person. Thus, exhibit P6. The same was not objected by the accused person. In the circumstances, I find the second issue to have been proved beyond reasonable doubts. I thus dissent from the opinions of the Gentleman and Ladies Assessors.

On the third issue, *whether chain of custody of the seized narcotic drugs was properly established*, in his final submissions Mr. Mwinuka learned State Attorney alleged that the same was not interfered with, whereas different documents were tendered by the prosecution (exhibit P1, P3, P4, P5, P8 P9) and exhibit P2 the bag was labelled to prove the same. That the said documents supported testimonies of prosecution witnesses. On the other hand, Ms Janeth, the learned Defence Counsel was of the view that the same was not properly maintained as it is not shown when the bag (exhibit P2) came from PW2 (sic) and went to Inspector Ezekiel Midala (PW6).

With due respect to the learned Defence Counsel, movement of exhibit P2 after being seized started from Inspector Ezekiel Midala who had prepared a Certificate of Seizure as the Senior police officer who supervised the search. Inspector Midala handed over the exhibits to PW1 D/Sgt Hashim the exhibit keeper who kept the exhibit and handed over the same to PW8 who took the exhibit to PW3 who took the samples of khat substances to PW10. PW10 examined the samples of narcotic drugs and prepared a report. (Exhibit P9). PW8 took back the remaining narcotic drugs in the bag to PW1 who tendered the exhibits during the trial. Moreover, the narcotic drugs were labelled on each handing over to

enable tracking of the same. That is to say at the RCO's office PW1 labelled the exhibit as A and IR reference number MOSHI/IR/3151/2015, at the Chief Government Chemist office Arusha Zone PW3 labelled the exhibit as NZ37/2015 and at Dar es Salaam PW10 labelled it as 351/2015. Each handing over was documented and the above noted exhibits prove the same. On the basis of all that, I am strongly convinced that chain of custody in this case was properly observed and established by the prosecution. Thus, the authenticity of the seized narcotic drug from the time it was seized to the time it was presented in court, is not questionable.

Therefore, since the prosecution has managed to establish all the ingredients of the offence charged, I find the prosecution to have proved the offence charged against the accused person beyond reasonable doubts. Hence, I hereby convict the accused person of the offence of Trafficking in Narcotic Drugs contrary to **section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95 R.E 2002**, as charged.

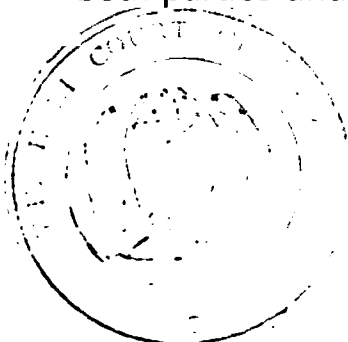
Date at Moshi this 01<sup>st</sup> day of June, 2022.

  
**S. H. SIMFUKWE**

**JUDGE**

**01/6/2022**

**COURT:** Judgment delivered in the presence of the learned counsels of both parties and the accused person.



  
**S. H. SIMFUKWE**

**JUDGE**

**01/6/2022**