

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

**CRIMINAL SESSION CASE NO. 28 OF 2016**

**REPUBLIC**

**VERSUS**

**EKENE PAUL NDEJIABI**

**JUDGMENT**

*Date of Last Order: 9/11/2022*

*Date of Delivery: 11/11/2022*

**AMOUR S. KHAMIS, J.:**

Ekene Paul Ndejiabi stand charged with the offence of trafficking in narcotic drugs contrary to Section 16(1) (b) (i) of the Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95, R.E 2002.

The particulars of offence were that on or about 18<sup>th</sup> day of March 2012, at Julius Nyerere International Airport, Ilala District, Dar es Salaam Region, he did traffic in narcotic drugs namely, heroine hydrochloride weighing 1101.86 grams valued at Tanzanian Shillings Forty Nine Million Five Hundred Eighty Three Thousand and Seven Hundred (Tshs. 49,583,700/=) only.

Upon a plea of not guilty, the case proceeded to a full trial that commenced on 20<sup>th</sup> May 2019 and ended on 2<sup>nd</sup> July 2019.

Throughout trial, Ekene Paul Ndejiobi, hereinafter to be referred to as the accused, enjoyed legal representation of Mr. Simon Mrutu, learned advocate.

The Republic was ably represented by Mr. Tumaini Kweka, learned Principal State Attorney assisted by Ms. Ashura Mnzava and Mr. Frank Tawale, learned state attorneys.

In support of the charges, the prosecution led eleven (11) witnesses and had nine (9) exhibits. The defence had one witness; the accused himself, with no exhibits to tender.

The prosecution evidence was that on 18<sup>th</sup> March 2012 the accused was at Julius Nyerere International Airport ready to travel to Lagos Nigeria via Nairobi, by Kenya Airways.

At a departure gate, he walked through the scanning machine which detected suspicious items in his body.

PW 8 Hassan Simai, PW 6 F 2244 D/SSGT Andrew Stanslaus Misonge, one Juma Ngoma, Ms. Veronica Emmanuel, Cosmas Ndomba, Emmanuel Joshua and E 309 CPL Boniface noticed that the accused's private parts were puffed up and on questioning, attributed the swelling to a hernia decease.

Dissatisfied by the replies, the security officers directed the accused to a private booth for physical inspection.

Nevertheless, the accused did not reach the inspection room as he took to heels towards the parking lot.

He was chased by Police and security officers, apprehended and taken back to a departure section where a thorough physical search was carried by PW 8.

17 pellets hidden in his underwear were found with some of them picked from the ground allegedly fell as he ran away.

The accused was placed under observation of the Police Anti - Drugs Unit (ADU) where PW 10 PF 18342 Inspector Majinji Peter Pimbili assisted by the late D/C Engelbert were in charge of the process.

Apart from the 17 pellets, Police seized the accused's Nigerian passport, two air tickets for Kenya Airways and Ethiopian Airways which were subsequently handed over to PW7, Inspector Petro Maskamo.

Inspector Maskamo handed over the pellets, passport and air tickets to PW 3, SP Neema Mwakagenda.

On 19/03/2012 the accused defecated 19 pellets suspected to be narcotic drugs in presence of PW 10 Inspector Majinji Peter Pimbili, PW 11 Novlin S. Munuo and F 883 the late D/C Englibert.

The defecation was recorded in an observation form (Exhibit P 7) that was dully signed by the accused, PW 10, PW 11 and the late D/C Englibert.

The 19 pellets were handed over to PW 7 who in turn presented to PW 3, custodian of exhibits with Police Anti - Drugs Unit.

Following complications on swallowed pellets, PW 10 and the late D/C Englibert took the accused to Amana Hospital where he was hospitalized and subsequently referred to the Muhimbili National Hospital.

At Muhimbili National Hospital, the accused was attended to by PW 5 Augustino Martin Makungu, a nurse and Dr. Sifaeli Mgalula, a medical doctor at the Emergency Department.

While under treatment on 20/3/2012, the accused defecated 32 pellets in presence of PW 10, D/C Englibert, PW 5 and Dr. Sifaeli Mgalula.

PW 10 handed over the 32 pellets to PW 3 on same date and handover was recorded in the exhibits register.

The accused was interrogated by PW 7 on 21/03/2012 and recorded a cautioned statement confessing to have been found trafficking 68 pellets of narcotic drugs.

The 68 pellets were sealed on 21/03/2012 by PW 3 in presence of PW 4 Zainabu Duwa Maulana, a ten cell leader and thus independent witness, SACP Godfrey Nzowa, Commanding Officer of the Police ADU, Afande Wamba and the accused person.

On same date, PW 3 in a company of other police officers presented the sealed pellets to the Chief Government Chemist and received by PW 1 Bertha Fredrick Mamuya and PW 9 Theresa John Kahatano, Government Chemists.

The Chief Government Chemist issued unwritten preliminary report and subsequently a final written report indicating that the 68 pellets contained Heroin Hydrochloride weighing 1101.86 grams.

The Drug Control Commission was notified of the incident and based on findings of the Chief Government Chemist, PW 2 Christopher Joseph Shekiondo, prepared a certificate of value of narcotic drugs and psychotropic substances dated 29/08/2012.

The certificate of value of narcotic drugs was admitted as Exhibit P 3 and showed that the Heroin Hydrochloride in question was valued at Tshs. 49,583,700/=.

The accused, a Nigerian national, was placed on defence and gave a sworn testimony denying the charge. He advanced that his presence in Tanzania was on a business trip.

He stated that instead of leaving the country on 13/03/2012, overstayed up to a date of his arrest, 19/03/2012.

On date of the incident, he visited Julius Nyerere International Airport at 1.00 p.m. for purposes of extending an air ticket with Ethiopian Airlines.

On inquiring for location of the airliner's office at the airport, two unknown men showed up and demanded his identification.

As the accused struggled to introduce himself, was suddenly ambushed and lost consciousness until the next date, 20/03/2012, when found himself in the Central Police Station as a remandee.

Subsequently, he was arraigned in the Kisutu Resident Magistrates Court for the offence of trafficking in narcotic drugs which he insisted, was fabricated.

Mr. Tumaini Kweka, learned Principal State Attorney, was upbeat that the prosecution team had proved its case beyond reasonable doubts.

He contended that all witnesses for the prosecution were credible with primary information on the incident.

The learned principal state attorney submitted that evidence was sufficiently produced to show that the accused trafficked in narcotic drugs and that the substance found with him was narcotic drugs.

Mr. Simon Mrutu, learned advocate for the accused, strongly asserted that the prosecution case was full of contradictions and lacked testimony (ie) of key witnesses.

Two distinguished assessors sat with me patiently throughout trial and unanimously opined that the accused was guilty as charged.

These were Mr. Jonas Jonas Mgomba and Ms. Amina Juma Kibinda.

Four (4) main issues arose for determination in this matter, namely:

1. Whether the prosecution proved that the accused person did an act of drug trafficking.
2. Whether the substance allegedly seized from the accused was the same item(s) presented to the Government Chemist Laboratory Agency for analysis.
3. Whether the prosecution proved that the substance allegedly trafficked by the accused was narcotic drugs.
4. Whether the prosecution proved its case beyond reasonable doubts.

I will start addressing the first issue.

Section 16(1) (b) (i) of ***THE DRUGS AND PREVENTION OF ILLICIT TRAFFIC IN DRUGS ACT, CAP 95 R.E 2002*** provides as follows:

*"16 (1) Any person who:*

*(b) 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."*

The term "trafficking" is defined in Section 2 of the Act to mean the importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance any substance represented or held out by that person to be a narcotic drug or psychotropic substance or making of any offer but does not include any of those acts that were permitted by the law or under a valid licence.

Much as nature or ingredient of trafficking was not detailed as per the definition stated above, the particulars of offence showed that the offence was committed at Julius Nyerere International Airport.

No memorandum of agreed facts was recorded as the accused denied each and every allegation during preliminary hearing.

PW 6 D/SSGT Andrew Stanslaus Misonge and PW 8 Hassan Abdallah Simai, testified that as Police and security officers respectively at the Julius Nyerere International Airport they detected that the accused had carried narcotic drugs.

These two witnesses were in a company of fellow security officers; Ms. Veronica Emmanuel, Cosmas Ndomba, Emmanuel Joshua and Juma Ngoma when the accused arrived at the departure section for screening at 3.18 am.

There was an alarm as the accused passed through the screening machine which necessitated a physical inspection.

Upon inspection by PW 8, the accused private parts were found with protrusion of which he associated with hernia.

However, when asked to visit a private booth for further physical inspection, the accused ran away towards the airport's parking lot and in the process, dropped pellets from his body.

The pellets dropped by the accused were picked by PW 8 and upon counting, were found to be seventeen (17) in total.

PW 10 Inspector Majinji Peter Pimbili, a former member of the Anti - Drugs Police Unit (ADU), was on duty at Julius Nyerere International Airport on 19/03/2012 and held the accused under observation.

In a company of the late D/C Englibert, PW 10 and PW 11 Lovline Shaftael Munuo, witnessed the accused defecate nineteen (19) pellets in a



special toilet at Julius Nyerere International Airport around 1.30 to 1.50 p.m. on 19/03/2012.

PW 10 testified that soon after 1.50 p.m, the accused complained of stomach pains and took him to Amana Hospital and subsequently to Muhimbili National Hospital for treatment.

PW 10 and PW 5 Augustino Martin Makungu (a nurse at Muhimbili National Hospital), stated that while at Muhimbili National Hospital, the accused was attended by PW 5 and Dr. Sifaeli Mgalula.

In the process of treatment on 20/03/2012, the accused who could not talk but spoke through body signs, expressed a need to attend a call of nature.

He was taken to a special room in which a bed pan was supplied as a toilet to defacate 29 pellets and subsequently 3 pellets.

The defacation was witnessed by PW 10, D/C Englibert, Dr. Sifaeli Mgalula and PW 5.

There was also Exhibit P 7, an observation form dated 19<sup>th</sup> March 2012 showing that 19 pellets were defacated by the accused at 13.50.

The form was co-signed by the accused, Novline Munuo (PW 11), D/C Englibert and PW 10 Inspector Majinji Peter Pimbili.

PW 7 Inspector Petro Cyprian Maskamo, recorded the accused's cautioned statement (Exhibit P 8) on 18/03/2012 from 2.00 pm.

The statement corroborated testimonies of PW 5, PW 6, PW 8, PW 10, PW 11 and Exhibit P 7.

In the statement, the accused confessed to acts of trafficking and in page 3, he partly stated that:

*"...One day this friend told me to meet at Biafra grounds and he told me that there is one business that he want me to take it to Nigeria and he promised that after reaching there I will be paid USD 1000 me that business will assist to get money and that money will help some of it to get a team. Mr. Pili gave me nineteen pellets of narcotic drugs. After that I made arrangements of going to Nigeria and I remember it was on the 17<sup>th</sup> March 2012 when I arrived at the airport, Julius Nyerere International Airport around 3.00 hours mid night. I hidden those nineteen pellets in my secrecy and I knew it doing that can help to pass at screening point without problem.....I passed myself at the screening point one official told me that there is something abnormal around my body and he asked me to go to the private room. I didn't reach the private room then I started to run so long I knew I had something illegal in my secrecy parts. But few minutes later I was arrested by one police officer and other airport official..."*

The evidence on record showed that some of the pellets were swallowed by the accused and others kept in his private parts.

The swallowed pellets were defacated in presence of several prosecution witnesses.

From testimonies of PW 3 SP Neema Andrew Mwakagenda, PW 6 D/SSGT Andrew Stanslaus Misonge, PW 7 Inspector Petro Cyprian

Maskamo, PW 8 Hassan Abdallah Simai and PW 10 Inspector Majinji Peter Pimbili, the accused was arrested at Julius Nyerere International Airport in an attempt to check in for purposes of flying to Nigeria.

The said evidence was corroborated by Exhibits P 4, a Nigerian Passport No. A 03309108 in the accused name, Exhibit P 5, an electronic ticket issued by Ethiopian Airlines on 9<sup>th</sup> March 2012 and Exhibit P 6, a passenger's receipt issued by Ethiopian Airlines on 12/03/2012 indicating that the accused's air ticket was updated.

These pieces of evidence, in my view, suggested that at the time of arrest, the accused had carried or stored 68 pellets of narcotic drugs and was about to export them to Nigeria.

In other words, the named pieces of evidence, showed that the prosecution had proved ingredients of trafficking as defined in Section 2 of Cap 95. R.E 2002 which in this case were storing and exportation.

The first issue is therefore answered in the affirmative.

The second issue is: Whether the substance allegedly seized from the accused was the same one(s) presented to the Government Chemist Laboratory Agency for analysis.

This issue is connected to a chain of custody. The law as stated in ***PAULO MADUKA & 4 OTHERS V REPUBLIC, CRIMINAL APPEAL NO. 110 OF 2007*** (unreported) is that a chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed it.

In **JACKSON JOHN V REPUBLIC, CRIMINAL APPEAL No. 515 OF 2015** (unreported) the Court of Appeal restated the law on this subject, thus:

*"By chain of custody, we have in mind the chronological documentation and or proper paper trail, showing the seizure, custody, control, transfer, analysis and disposition of evidence, be it physical or electronic. The idea behind recording the chain of custody is to establish that the alleged evidence is in fact related to the alleged crime rather than, for instance, having been planted fraudulently to make someone appear guilty."*

Yet in a recent case of **KADIRIA SAID KIMARO V REPUBLIC, CRIMINAL APPEAL NO. 301 OF 2017** (unreported), the Court of Appeal qualified its position expressed in earlier decisions and observed a need to consider whether the items under consideration could easily change hands or not, thus:

*"However, in the instant case, the items under scrutiny are pellets. We are of the considered view that pellets cannot change hands easily and therefore not easy to tamper with. In cases relating to chain of custody, it is important to distinguish items which change hands easily in which the principle stated in Paul Maduka would apply. In cases relating to items which cannot change hands easily and therefore not easy to tamper with, the principle laid down in the above case can be relaxed....."*

Facts in the instant case are similar to those in **KADIRIA SAID KIMARO** (supra) as items under cogitation in both cases are pellets detected and seized at a screening machine of the Julius Nyerere International Airport.

PW 3 SP Neema Andrew Mwakagenda, custodian of exhibits at Police Anti - Drugs Unit, testified that on 19/03/2012, she received 19 pellets suspected to contain narcotic drugs from Inspector Petro Maskamo (PW 7).

The pellets kept in 3 envelopes were recorded in the exhibits register through Police file no. JNIA/IR/79/2012 and then stored in a strong room.

On 20/03/2012 she received 32 pellets from Inspector Majinji Peter Pimbili (PW 10), recorded in the exhibits register through file no. JNIA/IR/79/2012 and were kept in a strong room.

On 21/03/2012 PW 3 sealed the 68 pellets in one khaki envelope labelled JNIA/IR/79/2012 in presence of the accused and other persons.

Those present were PW 4 Zainabu Duwa Maulana, an independent witness (ten cell leader), SACP Godfrey Nzowa, then Head of Police ADU, PW 7 Inspector Petro Maskamo, A/Inspector Derick and D/Constable Hassan.

PW 3 added that on same date, the sealed pellets were presented to the Chief Government Chemist for analysis.

A/Inspector Derick and D/Constable Hassan accompanied PW 3 to deliver the sealed 68 pellets to the Chief Government Chemist where PW 1 Bertha Fredrick Mamuya and PW 9 Theresa John Kahatano received them.

PW 4 Zainabu Duwa Maulana and PW 7 Inspector Petro Maskamo corroborated the evidence of PW 3 on wrapping and sealing of the 68 pellets suspected to be narcotic drugs.

PW 7 further testified that upon arrival at Julius Nyerere International Airport at 7.45 on 18/03/2012, was briefed on the accused's arrest by PW 6 who handed over to him 17 pellets, two air tickets for Kenya Airways and Ethiopian Airways and a Nigerian Passport seized from the incident.

PW 7 kept the 17 pellets with a thumb size and shape, passport and air ticket in a khaki envelope that was subsequently handed over to PW 3 through the exhibits register.

The witness recognized the items handed over to PW 3 as Exhibits P 2, P 4, P 5 and P 6.

PW 6 F 2244 D/SSGT Andrew Stanslaus Misonge testified that 17 pellets were seized from the accused on date of the incident at Julius Nyerere International Airport.

He added that apart from the pellets that were of a thumb size, the security officers including PW 8 and him, seized the accused's passport and two air tickets for Kenya Airways and Ethiopian Airways.

All the seized items under his custody were handed over to PW 7, Inspector Petro Maskamo on 18/03/2012 at around 7.00 a.m.

PW 10 Inspector Majinji Peter Pimbili and PW 11 Novline S. Munuo adduced evidence that the 19 pellets defacated by the accused on 19/03/2012 were collected by PW 10.

PW 10 testified that after filling in the observation form, the 19 pellets were handed over to Inspector Petro Maskamo (PW 7).

PW 5 Augustino Martin Makungu and PW 10 Inspector Majinji Peter Pimbili testified that 32 pellets defecated by the accused at Muhimbili National Hospital were kept in a nylon bag that was collected by PW 10.

PW 10 added that upon the accused's discharge from Muhimbili National Hospital on 20/03/2012, he took him to Headquarters of Police ADU where 32 pellets were handed over to PW 3 around 9.00 p.m.

He explained that a handover to PW 3 was recorded in the exhibits register through file no. JNIA/IR/79/2012.

These pieces of evidence showed how the 68 pellets of narcotic drugs were seized, defecated, transferred, stored and presented to the Chief Government Chemist for analysis.

No cogent evidence was produced to show any possibility for the pellets or contents thereof to have been tampered with at any point in time.

Under these circumstances, I hold that the chain of custody was not broken down from the point of seizure up to the time of tendering Exhibit P 2 in Court.

The third issue is whether the prosecution proved that the substance allegedly trafficked by the accused was narcotic drugs.

Documentary, real or physical and oral testimonies were led in respect of this aspect of the case.

PW 1 Bertha Fredrick Mamuya and PW 9 Theresa John Kahatano, gazetted Government Chemists, received the sealed pellets from PW 3 on 21/03/2012.

The exhibit was assigned laboratory number 169/2012, verified in presence of PW 3 and other police officers accompanying her and a preliminary test was conducted.

The khaki envelope containing the pellets was admitted as Exhibit P 1 while the 68 pellets were marked as Exhibit P 2.

In a preliminary test conducted on same date, the chemists established that contents of the pellets weighed 1101.86 grams and the substance in them was heroine hydrochloride.

Subsequently, a confirmatory test was conducted through Gas Chromatology Mass Spectrophotomic, a special machine used to detect narcotic drugs.

Results from the machine showed that powdered substance in the 68 pellets was Heroine Hydrochloride or Dicetylmophine Hydrochloride.

Exhibit P 9 was a final report issued by the Chief Government Chemist on 27/08/2012 in respect of Exhibit P 2.

It was co-signed by PW 9 and one D. Z Matata, Acting Chief Government Chemist.

The report made reference to an exhibit related to Police file no. JNIA/IR/79/2012 presented by PW 3 and confirmed that contents thereof was Heroine Hydrochloride or Diacetylmorphine Hydrochloride.



PW 1, PW 3, PW 4, PW 5, PW 6, PW 7, PW 8, PW 9, PW 10 and PW 11 handled the 68 pellets at different times and testified that the same had shape of a thumb, sausage or "mbilimbi" and plastered with a thin layer of plastic material that protected leakage of their powder contents.

I have personally inspected the 68 pellets tendered and admitted in evidence as Exhibit P 2. The description stated by the prosecution witnesses in respect thereof cannot be faulted or questioned.

In such circumstances, I find that the prosecution successfully proved that 68 pellets seized from the accused (Exh.P.2) contained narcotic drugs, namely Heroin Hydrochloride or Diacetylmorphine Hydrochloride.

The last issue was whether the prosecution proved its case beyond reasonable doubts.

Under Section 3 (2) (a) of ***THE EVIDENCE ACT, CAP 6, R.E 2002***, a criminal offence is said to have been proved if it is proved beyond reasonable doubts.

As an emphasis to that cherished principle, the Court of Appeal in ***ANUARY NANGU AND ANDREW KAWAW ATHUMANI V REPUBLIC, CRIMINAL APPEAL NO. 109 OF 2006*** (unreported) held that:

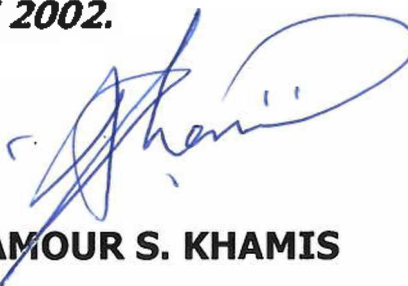
*".....the prosecution was at liberty to choose the witnesses whom they considered important because what matters was to discharge their burden of proof and not the number of witnesses they summoned....."*

In the present case, the eleven (11) prosecution witnesses were credible with first-hand information relating to the incident.

I have also examined the nine (9) prosecution exhibits and found them to be relevant and directly proved a charge against the accused.

Generally speaking, the evidence on record proved the charge facing the accused beyond reasonable doubts and on strength of the foregoing, the accused person, EKENE PAUL NDEJIOBI, is hereby found guilty and convicted on a charge of trafficking in narcotic drugs contrary to Section 16 (1) (b) (i) of ***THE DRUGS AND PREVENTION OF ILLICIT TRAFFIC IN DRUGS ACT, CAP 95, R.E 2002.***

It is so ordered.



**AMOUR S. KHAMIS**

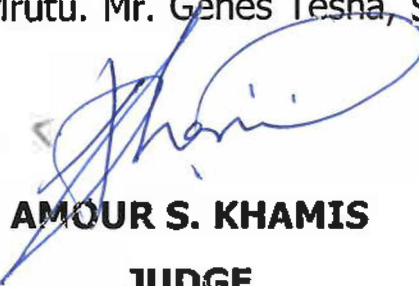
**JUDGE**

**11/11/2022**

**ORDER**

Judgment delivered in open Court in presence of the accused in person and his advocate, Mr. Simon Mrutu. Mr. Genes Tesha, Senior State Attorney, is present for the Republic.

Right of appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**11/11/2022**