

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

AT DAR ES SALAAM

CRIMINAL SESSION CASE NO. 18 OF 2017

REPUBLIC

VERSUS

EJIOFOR HENRY OHAGWU

JUDGMENT

21/11/2022 & 08/12/2022

BWEGOGGE, J.

The charge levelled against the accused person aforementioned is namely, trafficking in narcotic drugs c/s 15 (1) (b) of the Drugs Control and Enforcement Act (No. 5) of 2015.

The particulars of the offence allege that on the 2nd January, 2016 at the Julius Nyerere International Airport (henceforth JNIA), within Ilala District in Dar es salaam Region, did traffic in narcotic drugs namely, heroin hydrochloride weighing 4197.42 grams.

The accused person vehemently refuted the charge when he was arraigned in this court. The prosecution, in an attempt to prove the charge, had procured the attendance of nine (9) witnesses to testify against the accused person.

For the interest of brevity, the substance of the prosecution case is as follows: On the fateful day of 02nd January, 2016 one Steven Masala (PW7), the security officer employed by the Tanzania Airport Authority (henceforth TAA) was on duty at the JNIA. PW7 was assigned to operate the X-Ray (baggage scanner) at the departure section. At 01:50 am PW7 spotted suspicious goods in the two suitcases which passed through the scanner machine. PW7 had instructed his colleague namely, Lamu Salimu Hamad (PW5) to inspect the suitcases to clear the suspicion. PW5 had awaited near the suspicious suitcases to identify the owner/ passenger who would pick the same. Soon thereafter, allegedly, one Ejiofor Henry Ohagwu, the accused herein, had passed through the body scanner and picked up the suspicious luggage. PW5 had kindly informed the accused herein his intention to search/ inspect the suitcases. The accused had no problem with the request. However, before PW5 could commence his inspection, allegedly, the accused had taken to his heels, broke out of the departure section, and ran across

the main plaza, attempting to disappear from the scene. PW7 in company of his colleagues pursued the accused person. Eventually, the accused person was arrested. PW7 had handed over the luggage allegedly owned by the accused to Assistant Inspector Duncan (PW4), the police officer in charge of security, for his necessary action, having apprehended that there was something fishy with the suspect's suitcases which prompted the same to flee.

Later on, PW4 searched the accused person and his alleged suspicious suitcases in presence of PW5, PW7, and one Akida Dollah Faraji (PW8). Allegedly, PW4 had discovered six (6) packets of powdery substance from the accused suitcases suspected to be narcotic drugs.

It was further alleged that the accused person admitted the fact that the suspicious packets containing powdery substances found in his possession were narcotic drugs. PW4 had executed the certificate of seizure which was signed by PW5, PW8 and the accused person. Thereafter, one Monica, the Assistant Superintendent of Police (PW6) had taken the cautioned statement (exhibit P. 6) of the accused person before the accused and exhibits were submitted to the custody of the Anti-Drugs Unit (ADU) for safe custody.

On 04th January 2016, one Neema(PW6), the Senior Superintendent of Police, packed and labelled the exhibits (six packets of powdery substance) in witness of one Amos Mohamed (PW2), and handed the same to the Government Chemist (PW1) for the laboratory analysis whereas PW1 confirmed that the suspicious powdery substance was heroin chloride, a highly addictive analgesic drug. The same had executed his laboratory analysis report (exhibit P2) to that effect.

On the basis of the afore highlighted facts, the accused person was charged with the offence herein and arraigned in this court.

On the other hand, it is the defence case that on the fateful day, the accused person had in fact entered the departure section of JNIA intending to travel to Nigeria. He admits to have possessed a handbag only. But he contends that the suspicious suitcases alleged to have been found with narcotic drugs were not his belongings. The accused hit the sky denying ownership of the alleged incriminating suitcases and narcotic drug. The accused alleged that the incriminating suitcases and narcotic drugs were planted on him by PW4, PW5 and PW7. Further, it was alleged by the accused (DW1) that he was beaten being forced to admit possession of incriminating suitcases and narcotic drugs, sign the certificate of seizure, and confess the commission of

offence whereas his signature/thumbprint on the caution statement (exhibit P6) was forcibly procured with the intention to incriminate him.

Otherwise, the accused person admitted possession of the handbag, electronic device (tablet) and travelling document, among others, and contended that the footage from the video surveillance (CCTV security camera) would have been the only reliable evidence to have shed the light on what had transpired at the departure section on the fateful night he was arrested. The accused protested his innocence and prayed for justice. He likewise alleged the prosecution for concocting the charge herein against him and asserted that the prosecution case is pregnant with technical faults which renders it too weak to ground his conviction.

The prime issue before this court is whether the accused person had trafficked in narcotic drugs namely, heroin chloride on the fateful night of 02nd January, 2016.

Primarily, this court finds it pertinent to highlight the guiding principles underlying criminal law as follows:

1. It is the prosecution side which has the burden to prove the charge preferred against the accused person beyond reasonable doubt. See

- the cases namely, **DPP Vs. Ngusa Kaleja Mtangi and Another** (Criminal Appeal 276 of 2017) [2020] TZCA 288 and **Simon Edson @ Makindi Vs Republic** (Criminal Appeal 05 of 2017) [2020] TZCA 1730.
2. There is no particular number of witnesses required for the prosecution to discharge its burden of proof. It is credibility and reliability which matters. See section 43 of the Evidence Act (Cap. 6 R.E 2022) and the cases of **Sifael Francis Mwambo vs. Republic** (Criminal Appeal No. 293 of 2008) [2011] TZCA 218, and **Joshua Chipahna @ Kidyani vs Republic** (Criminal Appeal 3366 of 2020) [2021] TZCA 211.
 3. It is not the duty of the accused person to prove his innocence. It suffices that he raises reasonable doubt on the prosecution case. See also **DPP vs Ngusa Kaleja @ Mtangi and Another** (supra).
 4. The accused person may only be convicted on the strength of the prosecution case, not on basis of the weakness of his defence. See the cases namely, **Mohamed Haruna Mtupeni and Another vs Republic** Criminal Appeal 25 of 2007 (unreported), **Mutta and Another vs Republic** (1977) LRT 54 and **DPP vs Ngusa Kalleje @ Mtangi and Another** (supra).

5. Witnesses are entitled to credence and their testimonies must be believed unless there are cogent reasons for not believing a witness. And cogent reasons for not believing a witness include the fact that the witness has given improbable or implausible evidence, or the evidence has been materially contradicted by another witness or witnesses. see cases of **Goodluck Kyando vs Republic (2006) TLR 363** and **Khamis Said Bakari vs. Republic**, Criminal Appeal No. 359 of 2017 CA (unreported), among others.

Having revisited the aforementioned guiding principles, this court reverts to the prosecution case to find whether it passes the scales of justice.

PW7 (Steven Masala Kagosi) is the security officer and employee of TAA stationed at JNIA. The same was the scanning machine operator on the fateful night of 02/01/20216. He deponed to have observed suspicious goods in two large suitcases which had passed through the machine. His suspicion prompted the same to assign his colleague, PW5 (Lamu Salimu Hamadi) to inspect the luggage.

PW5 testified that he waited nearby the suspicious luggage to see who would pick the same whereas later on, allegedly, the accused herein approached

the luggage and attempted to move the same. PW5 had asked the accused whether the luggage belonged to him whereas the accused had given a confirmatory response. Likewise, PW5 had asked the accused person whether he had packed the contents in the suitcases himself whereas the accused admitted the fact. Then PW5 asked the accused person to open the suitcases to allow him to search therein. To his surprise, the accused person had taken to his heels. He was pursued by PW7 and his colleagues with the assistance of the police officer thereof.

The testimonies of PW5 and PW7 were corroborated by PW4 (Assistant Inspector Duncan), the police officer who was on duty at the JNIA on that fateful night. In substance, PW4 had deponed that at about 01:50 am on the fateful night of 02nd January, 2016 while patrolling the departure section, he had seen the luggage inspector (PW5) interrogating the passenger whose two large suitcases had passed through the scanner. Then he had seen the said passenger fleeing away being chased by PW7 whereas PW5 remained behind keeping his eye on the suspicious luggage.

Further, PW4 deponed that within a span of minutes, the suspect was brought back to the scene of the incident. PW4 had moved closer to the scene to be afforded an explanation for the fracas broken thereof. Having

been fed with sufficient information pertaining to the suspicion cast on the accused, PW4 had asked the suspect to identify himself whereas the same mentioned his name as Ejiofor Henry, the Accused herein. PW4 had taken charge and escorted the same to the police post nearby whereas he had conducted search on the accused person and his suitcases. PW4 had enlightened this court that PW5, PW7, and PW8 were present to witness the search exercise as independent witnesses.

PW4 informed this court that in the suitcases allegedly belonging to the accused herein, he had discovered total six (6) packets of powdery substance (three (3) packets from each suitcase) suspected to be narcotic drugs. His suspicion was based on the powdery substance which flowed from one of the punctured packets. PW4 had executed the certificate of seizure (Exhibit P5) whereas the six (6) packets of powdery substance suspected to be narcotic drugs were recorded thereon. Other items found in the possession of the accused person were namely; two suitcases; one handbag containing clothes; the passport of the accused person; two telephones make Nokia and Tecno; a Samsung tablet and 475 USD were likewise enlisted on the seizure warrant. The certificate of seizure was tendered and admitted in evidence as exhibit P5. PW5 and PW8 signed the certificate of seizure.

In tandem with the above, PW4 testified that having executed the seizure warrant, he had packed the six (6) packets of powdery substance into five khaki envelopes, sealed the same and required all witnesses thereof to sign thereon. Later on, PW4 handed the same to PW3 (ASP Neema) at the ADU for safe custody.

PW3 is the police officer in charge of the exhibit store at the ADU. The same had deponed in this court as follows: On 02/01/2016 at about 02:00hrs he had received exhibits from PW4 namely; six (6) packets containing powdery substance suspected to be narcotic drugs packed into the five (5) envelopes bearing the signatures and names of eyewitnesses who had witnessed the search and seizure exercise; two large suitcases belonging to the accused person; passport of the accused person and 475 USD, among others. PW3 had registered the exhibit as JNIA/IR/02/2016 and marked the packages accordingly. Finally, PW3 had stored all exhibits temporarily in her store room.

Further, PW3 testified that on 04/01/2016 she had removed the above named exhibits from the store and repacked the same. Three (3) packets of the suspicious powdery substance were packed into one khaki envelope and marked A1. The other remaining three (3) packets of the same were packed

into single khaki envelopes and marked A. PW3 had registered both packages with Reg. No. JNIA/IR/O2/2016 and signed thereon. Prior to the packing exercise, PW3 had procured witnesses, including PW2 (Amos Mohamed) who was the independent witness thereof. All witnesses, including PW2, had scribed their names and signatures on the envelopes above specified. The two envelopes (A and A1) were wrapped into the khaki sheet paper on which PW3 and witnesses thereof had written their names and signed thereon. Later on, PW3 packed the exhibits into a box, sealed and marked the same with the exhibit registration number. Likewise, the witnesses had written their names and signed thereon. Lastly, PW3 handed the exhibits to the Chief Government Chemist Office herein Dar es salaam accompanied by the submission form (Form No. DCEA 001) and official correspondence from ADU. The exhibits were registered with number 006/2016 having been received by the Government Chemist.

It is likewise in the testimony of PW3 that the Government Chemist, one Elias Mulimi (PW1) conducted laboratory analysis on the exhibit whereas a preliminary test conducted on samples taken from each packet confirmed the fact that the suspicious powdery substance was heroin. And, the total weight of the six (6) packets of powdery substance was found to be 4197.42

grams (three packets of powdery substance from the envelope marked A weighed 2016.62 grams, and the remaining packets from the envelope marked A1 weighed 2100.8 grams).

In the same vein, PW3 enlightened this court that PW1, having taken samples for further confirmatory test, had sealed the envelopes, inserted them into the box, marked the same with number 006/2016 and signed thereon. Then PW1 handed the exhibits to PW3 for safe custody. PW3 concluded her testimony by stating that since she had received the exhibit from the Government Chemist to this very date, the exhibits had been kept under her custody.

The testimony of PW3 was corroborated by PW2, the independent witness who had witnessed the packing exercise done by PW3. PW2 deponed that he had scribed his name and signature on envelopes and packages as an independent witness. PW2 identified his name and signature on the exhibit.

PW1 was procured to testify whereas he had given evidence which, in substance, is a replica of the testimony given by PW3. It suffices to point out that PW1 confirmed to have conducted the laboratory analysis on the suspicious powdery substance. He had deponed in this court that he had

received the exhibit from PW3 and registered the exhibit with number 006 of 2016. Then, he had broken the seal and took samples for testing whereas the preliminary tests and the results found were to the effect that the suspicious powdery substance was heroin.

PW1 had likewise confirmed that he had taken further samples for confirmatory tests by the use of high-performance liquid chromatograph whereas the final result was to the effect that the powdery substance was in fact heroin hydrochloride. PW1 had tendered the box containing the six (6) packets of heroin chloride which was admitted as collective exhibit P1. And the same tendered the final report in respect of the laboratory analysis on the exhibit which was admitted in evidence as exhibit P2. Having taken samples for further confirmatory tests, PW1 sealed the box containing the exhibit, scribed his name and his signature thereon, and handed the same to PW3.

Lastly, PW6, the Police Officer who recorded the cautioned statement of the accused person, testified in court that the accused person had admitted to possession of narcotic drugs when she interviewed him on the fateful night of 02nd January, 2016 at 03:55 hrs. The cautioned statement of the accused person was admitted in evidence as exhibit P6.

As aforesaid, it is a rule of law that a witness' testimony is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing the same [**Good Luck Kyando vs. Republic** (supra)]. I have scrutinized the evidence adduced by the prosecution witnesses and I find no ground to arrive at the conclusion that the witnesses who appeared before this court have given improbable or implausible testimony. Likewise, I have not discerned the material contradictions among the testimonies of the witnesses which would have reduced their evidential value. It suffices to point out that the prosecution witnesses have given coherent and corroborative evidence against the accused person. This court considers the prosecution witnesses herein as witnesses of truth who had given a direct account of events they were involved with in this case.

The accused person herein was the sole witness for defence. As I aforementioned, he admits to have possessed a handbag only, but the incriminating suitcases. The same vehemently denied possession of suitcases alleged to have been found with narcotic drugs (heroin chloride) and alleged the PW4, PW5 and PW7 herein for planting the incriminating exhibits on him. The accused opined that the evidence from the CCTV footage was crucial for

proof of the charge herein. The same opinion was shared by his counsel in his final submission.

Based on the weighty prosecution case, this court finds the accused defence implausible. The strength of the prosecution's case bolstered by the direct evidence given by witnesses who testified before this court renders the evidence from the CCTV footage redundant.

Further, it was alleged by the accused (DW1), and reiterated by his defence counsel in his final submission in that the accused was beaten being forces to admit possession of incriminating suitcases and narcotic drugs, sign the certificate of seizure, and confess to the commission of offence whereas his signature/thumbprint on the caution statement (exhibit P6) was forcibly procured with the intention to incriminate him. This court, likewise, finds these contentions an afterthought. It must be reckoned that the caution statement of the accused herein was tendered and admitted in evidence (exhibit P6). The accused statement bears incriminating facts which were not repudiated or retracted. The accused was recorded to have confessed to PW6 that he was found in possession of narcotic drugs and cast his blame on one "**Chika**" as the person who assigned him the role to traffic drugs to

Lagos in Nigeria having promised to be paid money. This piece of evidence remains unchallenged.

Apart from the above, the defence counsel has sought to impeach the credibility of the prosecution case on several grounds as follows: **One**, the chain of custody of the incriminating exhibits was not established. That the paper trail of the exhibits was not established, for instance, exhibit register and submission form (DCEA Form No, 001). The defence counsel referred the case of **Paulo Maduka and Others vs. Republic**, Criminal Appeal No. 110 of 2007 [2019] TZCA 372 to bolster his point. **Two**, it was contended that PW2 was not an independent witness because of his close relationship with PW3. Likewise, it was contended that PW5, PW7, and PW8 were government officials who could not be independent witnesses. **Three**, the suitcases allegedly found containing incriminating exhibits were not tendered in evidence. **Four**, the substance pertaining to the alleged box containing narcotic drugs (heroin chloride) was not mentioned and read out during the committal proceedings. Thus, on the above premises, the accused counsel opined that the case against the accused person was not proved beyond reasonable doubt; hence, the same should be acquitted.

I will address the contentions made by defence counsel sequentially, commencing the first contention pertaining to the allegation that the prosecution case lacks chain of custody and, or the paper trail. The term "chain of custody" is assigned meaning in the case of **Paulo Maduka and Others** (supra) as:

".....the chronological documentation and/or 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 crime – rather than, for instance, having planted fraudulently to make someone guilty. The chain of custody requires that from the moment the evidence is collected, its very transfer from one person to another must be documented and that it be provable that nobody else could have accessed it....."

It is obvious that the importance of the paper trail explained above is the preservation of the integrity of the exhibits by eliminating the possibility of tempering with the same. Admittedly, it is a fact that the prosecution has not tendered the exhibit register and submission form (DCEA Form No. 001) to prove the transfer of exhibit P1 from the custody of the exhibit keeper (PW3) to the Government Chemist (PW1). Now, can it be said that the missing of the above documentary evidence amounts to lack of chain of

custody of the key exhibit in this case? This query, I will attempt to answer hereunder.

Primarily, it must be reckoned that the accused in this case had confessed to PW6, as exhibited in his cautioned statement (exhibit P6), that he was carrying narcotic drugs. As I aforesaid, this piece of evidence remains uncontroverted as the statement was not retracted or otherwise repudiated. This evidence tallies with the finding of PW1.

I have directed my mind to the decision in the case of **Kileo Bakari Kileo and 4 Others vs. Republic**, Criminal Appeal No. 82 of 2013 & 330 of 2015 CA (unreported) whereas it was held:

"We wish to point out in this case that the issue of chain custody is of less significance. This is because the 1st appellant who was found with the stuff had orally confessed to PW6 that they were carrying a small amount of narcotic drugs; It is clear then that the question as to whether or not what was seized at Kabuku was heroin is not an issue as other cases of this nature."

The prosecution side forcefully argued in the final submission filed hereto that both oral and documentary evidence have similar weight in proving the chain of custody of narcotic drugs. The case of **Marceline Koivogui vs. Republic**, Criminal Appeal No. 469 of 2017, CA (unreported) was cited to

bring the point home. Likewise, it was argued that the chain of custody of 4197.42 grams of heroin hydrochloride (exhibit P2) found in the possession of the accused has been proved by the prosecution from the time of seizure, its transfer to the Chief Government Chemist Office and finally to the point the exhibits were tendered in court.

Further, it was argued by the prosecution that the oral account of the eyewitnesses namely, PW1, PW2, PW3, PW4, PW5, PW6, PW7 and (PW8), had orally proved the chain of custody and the said witnesses are entitled to their credence and their testimonies believed unless there are cogent reasons for questioning their credibility.

The argument made by the prosecution is buttressed by the decision in the case of **Marceline Koivogui vs. Republic** (supra) whereas the superior court aptly held:

" In the present case we thus cannot fault the trial court in having relied on credible oral account of the prosecution witnesses which was not impeached considering: One, documentation is not the only requirement in dealing with an exhibit and it will not fail the test merely because there was no documentation, and two, other factors have to be looked at depending on the prevailing circumstances in every particular case.

In the same vein, the Court further held:

".....in the wake of credible and oral account of the prosecution witnesses in handling the exhibit..... from the screening and detection, retrieval of the same, arrest of the suspect, subsequential handling of the exhibit at ADU, and Chief, as well as how the witnesses dealt with the exhibit, recognised it at the trial and such, maintained chain of custody."

See the same opinion in the cases of **Nyerere Nyegue vs. Republic**, Cr. Appeal No. 67 of 2010 CA (unreported) and **Joseph Leonard Manyota vs. Republic**, Criminal Appeal No. 485 of 2015 CA (unreported), among others.

Having scrutinized the prosecution case, I am inclined to subscribe with the prosecution in that the chain of custody in this case has been established by the oral account of the witnesses who testified against the accused person. It is in the record of this case that the suitcases contained incriminating exhibits were at the first instance in the custody of PW5 who had attempted to inspect the same at the JNIA departure section but aborted the exercise after the accused fled from him. The said suitcases were handed to PW4 who searched the same and discovered six packets of the powdery substance suspected to be narcotic drugs and filled seizure warrant (exhibit P5) to that effect. Then, he had packed the same in five khaki envelopes in

presence of PW5, PW7 and PW8 who had scribed their names and signature thereon. PW4 had delivered the suspicious powdery substance to ADU and handed the same to PW3 for safe custody whereas upon receipt, PW3 had marked the exhibit as JNIA /IR/ 02/2016.

Later on, PW3 packed the exhibits in two envelopes and marked them in presence of PW2 (independent witness), among others, and transferred the same to the Chief Government Chemist whereas PW1 had received the same, took the samples for preliminary and confirmatory tests, then coded the same as Lab. No. 006/2016. PW1 had confirmed that the suspicious powdery substance is heroin hydrochloride weighing 4197.42 grams, as per the report made after the confirmatory test (exhibit P2). Later, PW1 repacked the exhibit brought to him for analysis, marked and sealed it, then handed the same to PW3 for safe custody at the ADU facility.

During trial, PW1, PW2, PW3, PW4, PW5, PW7 and (PW8) identified the contents of exhibit P2 as the item they had handled or observed at various stages from arrest, seizure, transfer to the custodian and Government Chemist, and finally to the tendering of the same in court.

It suffices to point out that the oral account of prosecution witnesses has proved the chain of custody in this case. This court lacks cogent ground to conclude that the key exhibit (exhibit P2) had been mishandled or tampered with, notwithstanding the wanting of the submission form and exhibit register in the record of this case.

With regard to the contention that PW2 was not an independent witness because of his close relationship with PW3, and the contention that PW5, PW7, and PW8 were government officials who could not be independent witnesses, I find no compelling ground(s) advanced to assail the credibility of the above mentioned witnesses. The purported close relationship between PW2 and PW3 is not established. And the testimonies of PW5, PW7 and PW8 cannot be disbelieved on the mere ground that they are public officials. In this respect, it was held by the superior court in the case of **Khamis Said Bakari vs. Republic** (supra) as thus:

"We should intercede here to remark that the appellant challenged the credibility of supposed independent witnesses from TRA and Immigration Department (that is, PW5, PW7, PW9 and PW10) contending that none of them was truly neutral and independent. That they were bent to support the police version. In our view, the attack on the believability of these

witnesses solely on the ground of their occupation in public service is implausible.”

It was also contended by defence counsel that suitcases allegedly found containing incriminating exhibits were not tendered in evidence. This contention need not detain this court. As well known to the defence counsel, the suitcases found with the accused person were found inadmissible following his objection that the intended exhibits were not mentioned during committal proceedings. Be that as it may, the absence of the said suitcases hasn't shaken the strength of the prosecution case.

Lastly, it was contended by the defence counsel that the substance of evidence pertaining to the alleged narcotic drugs (heroin chloride) was not mentioned and read out during the committal proceedings. Hence, it was asserted by the counsel, the accused person was taken by surprise in court. It is obvious, the argument herein is an afterthought, as the defence counsel didn't object to the admission in evidence of the impugned key exhibit in this case. It doesn't pass muster, in my opinion, that the narcotic drugs which were the foundation of the charge facing the accused person herein amount to foreign evidence by the mere fact that it was not specifically mentioned by the prosecution in committal proceedings. It is uncontroverted fact that

the impugned key exhibit in this case features in the seizure warrant (exhibit P5) and the Government Chemist Laboratory Analysis Report (exhibit P.2), and acknowledged by the accused person in his cautioned statement, let alone the particulars of the charge sheet he was arraigned on.

The above discussion, in my perspective, negates the assertion made by the defence counsel that the case against the accused person was not proved beyond reasonable doubt. Likewise, it is my considered opinion that the general denial by the accused person herein has not only failed to controvert the prosecution case against him but furthered the same.

In the same vein, it has been testified by PW5 that the accused had taken to his heels when he was asked to open his suitcases for inspection at the departure section. This piece of evidence, which remains uncontroverted by the defence side, was corroborated by the testimonies of PW4 and PW7. It is my considered opinion that the accused attempt to escape when asked to open the suitcases for inspection is inconsistent with innocence.

In tandem with the above, it has been proved by the forensic report (exhibit P2) that the six (6) packets of powdery substance weighing 4197.42 grams are narcotic drugs namely, heroin hydrochloride. Heroin diacetylmorphine is


specified in the first schedule under the Drugs Control and Enforcement Act (No. 05) of 2015 as a narcotic drug. The terms heroin hydrochloride and heroin diacetylmorphine relate to the same substance [**Kileo Bakari Kileo and 4 Others vs. Republic**, (supra)]. The 4197.42 grams of heroin hydrochloride is beyond the minimum quantity for personal use, under the law of this land. Thus, it follows that the drugs found in the possession of the accused person were for commercial purposes.

The law [s. 28 of the Drugs Control and Enforcement Act (No. 05) of 2015] imposes a burden on the accused person to prove that the possession of the narcotic drugs was authorized and, or otherwise, considering all surrounding circumstances, was conscionable, which he failed so to do.

Based on the foregoing, this court finds that the prosecution has succeeded to prove the charge levelled against the accused person beyond reasonable doubt. The accused person is hereby convicted on the offence of trafficking in narcotic drugs c/s 15 (1) (b) of the Drugs Control and Enforcement Act (No. 05) of 2015.

DATED at DAR ES SALAAM this 08th December, 2022.




O. F. BWEGOGGE
JUDGE

The judgment delivered this 08th December, 2022 in the presence of Ms Salome Assey and Mr. Renatus Fikirini Nyika, the state attorneys representing the republic. Ms. Mainda Omary, learned advocate, held a brief for Mr. George Anyosisye, counsel for the accused person.




O. F. BWEGOGGE

JUDGE