

**IN THE HIGH COURT TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION**

AT DAR ES SALAAM

ECONOMIC CASE NO. 17 OF 2021

REPUBLIC

Versus

LONIE LIONEL RAYFORD

JUDGMENT

25th April and 26th May, 2023

ISAYA, J.:

Lonie Lionel Rayford stand charged in this case with the offence of trafficking in narcotic drugs contrary to Section 15(1) (a) of the Drug Control and Enforcement Act [Cap.95 R.E. 2019], read together with paragraph 23 of the First Schedule to and sections 57 (I) and 60 (2) of the Economic and Organised Crime Control Act [Cap.200 R.E. 2019].

It is alleged in the information that, on 4th July 2018, at Julius Nyerere International Airport within Ilala District in Dar es Salaam Region, the accused person did traffic in narcotic drugs namely, Heroine Hydrochloride weighing 2.188 kilograms. The accused person pleaded not guilty to the offence. On 11th October 2021, the trial commenced before my predecessor Hon. Banzi, J. The prosecution had paraded eleven (11) witnesses before I took over the trial. Up to the close of the prosecution case, the prosecution

side had called in a total number of fifteen (15) witnesses and tendered eleven (11) Exhibits to establish the case against the accused person. On the other hand, the accused person under the services of Mr. Omari Kilwanda and Ms. Susan Barnabas, learned Advocates, testified under oath as the sole witness for the defence and did not tender any exhibit.

To shed light on the prosecution case, a brief summary of the prosecution case goes as follows; Lonie Lionel Rayford, elderly and now at the age of 70 years old, resident of Michigan, America was arrested at Julius Nyerere International Airport, Dar es salaam on 04/07/2018 as he was about to board Fly Dubai flight to Bologna, Italy. It all started when on 04/07/2018 PW15 ACP Salmin Shelimo, while at Kilimanjaro International Airport, received information from the secret informer that another traveller trafficking in narcotic drugs with the name of Lonniel Lionel Rayford, an American citizen, would travel through JNIA, KIA or Zanzibar airports. Having received the information, he hurriedly contacted the two airports; Zanzibar and Dar Es Salaam. For JNIA, Dar es Salaam he made a phone call to the police officer on duty D/C Samwel Mollel and the immigration officers to detain him so as to know if it was true or not.

According to Samwel Justine Mollel (PW6), on 04/07/2018, at around 5:00 pm he was on duty at Julius Nyerere International Airport (JNIA) terminal III. While there, he received a call from his superior ACP Salmin Shelimo

(PW15) who informed him on the suspect that he was suspected to traffic narcotic drugs and intending to travel. Also, the investigation officers were already informed about the suspect and were instructed to arrest the suspect at the point of stamping his passport ready to exist. Upon receiving the instruction, PW6 informed Inspector Khalid and the security officer on duty Stephano Kagozi (PW2) to assist and follow up on the suspect (accused person).

Later, after some time, the accused person arrived at the screening area with two bags, one was black (Exhibit P6) containing clothes and another had blue and black colours with the logo Red Polo (Exhibit P4). PW2 conducted screening on the said bags while the accused person and PW6 were beside him. PW2 suspected one of the bags so he told the accused person to put the said bags on the screening machine again and after confirmation on what he suspected PW2 told PW6 that on a black and blue colour bag blue colour (Exhibit P4) there were substances suspected to be narcotic drugs. PW6 instructed PW2 to let the accused person go as they were intending to arrest him at immigration point.

The accused person proceeded to the Fly Dubai desk within JNIA where Twaha Ibrahim Kiponza (PW3) attended him as other passengers. The black and blue colour bag (Exhibit P4) and the black bag (Exhibit P6) were weighed and tagged with numbers FZ481177 and FZ481176

respectively. After he had checked in, he was handed over two board passes and two tags of bags. The bags were left there for boarding to Bologna Italy. Thereafter, the accused left for the immigration side. After almost two to three minutes he returned with Evans Assey, immigration officer (PW12). PW12 was called by Assistant Inspector Steven Mhina (PW10) who informed him that a passenger (accused person) was restrained to travel. Having confirmed that the accused person was restrained by the DCEA from traveling outside the country, he took the accused to the Fly Dubai desk to collect his luggage. There at Fly Dubai, the accused person recognized his luggage (Exhibit P4 and P6) and took them to PW12's office where PW12 communicated with the DCEA office. PW12 handed over the accused person to PW6 and Inspector Khalid at 8:30 pm, as they put him under restraint and ordered him to carry his bags. They went with him up to the police station within the airport. PW6 stayed with the accused person in the station until the following morning on 05/07/2018 when he was instructed by PW15 to take the accused person to the DCEA offices where PW6 handed over the accused person to PW7.

The prosecution evidence further revealed that PW7 after being handed over with the accused person was ordered by PW15 to conduct a search on the accused person and his luggage. PW7 explained to the accused on search exercise and conducted a search in the presence of the accused

person, Ignas Maembe (PW11) as an independent witness, PW9, and the other two witnesses WP Illuminata Mbilinyi and Erick Mwinuka. On the said search PW7 retrieved Powder Substances concealed in Exhibit P4 which were revealed later to be Heroine Hydrochloride and weighed 2.188 kg (Exhibit P5). He poured the said powder into the nylon plastic bag. Thereafter PW7 seized Exhibits P4, and P5 together with Exhibits P7, P8, and P10 (air tickets), and P11 listed them in the certificate of seizure (Exhibit P9), which was signed by PW7, PW11, and the accused person himself. PW7 handed Exhibit P6, Serene Guest Registration Form (Exhibit P7), Passport No. 486529504 of Lonie L. Rayford (Exhibit P8), a Lady's hat, a small drum, small basket, a black wallet containing credit cards, cash money 10 Euro, Tsh, 95,000/= and USD 543, Masai shuka, framed all picture, painted wall picture and one mobile phone make ZTE (Exhibit 11) to PW13 who handed over the same to PW8 on 08/06/2022.

PW7 handed over Exhibit P4 and P5 to Exhibit Keeper SSP Neema Mwakagenda (PW4) on the same date. PW4 packed and sealed the Exhibits P4 and P5 in the presence of the accused person and independent witness (PW11) together with other officers. The accused person, PW4 and PW11 appended their signatures in Exhibits P4 and P5 thereafter PW4 handed over the said Exhibits to PW9 who took the same to the Chief Government Chemist where Shimo Peter Shimo, a chemist (PW1) received exhibits,

registered, weighed Exhibit P5 and conducted preliminary and confirmatory tests over the exhibits and it was revealed that Exhibit P4 contained Heroine Hydrochloride substance and Exhibit P5 is Heroine Hydrochloride which weighed 2.188 Kg. PW1 received Exhibits P4 and P5 through the Sample submission form (Exhibit P2). After conducting the preliminary test, he sealed the exhibits with GCLA tapes and handed them back to PW9 together with a sample receipt notification, (Exhibit P3). On 06/07/2018 PW1 prepared the Analyst Report (Exhibit P1) and submitted it to Chief Government Chemist (CGC) for approval. PW9 took the exhibits back to PW4 who put the same on safe custody until on 06/04/2022 when she handed them over to Inspector Johari Msirikali (PW8) who keep those in safe custody until on 07/06/2022 when she took the same to the court.

At the closure of the prosecution case, the accused person was found with a case to answer in respect of the offence charged with. The accused person defended himself under oath as DW1.

The accused person firmly denied having been found trafficking in the narcotic drugs in question. Largely, the defence case is to the extent that, on a fateful date at Julius International Airport (JNIA), upon entering the airport he handed his luggage to the officers who were weighing the luggage. He deposed that he had two bags one bag was red and blue colour

and a small black and brown bag which he was carrying on his shoulder. He said that the person who was scanning the luggage was talking to the person who was standing behind him. The two were arguing on what they saw in the bag. The one who stood asked for the bag to be taken back for scanning and they did so twice. Thereafter they checked his passport and allowed him to proceed with his journey. DW1 took his bags to KLM reception. The officer of KLM could not get the confirmation of the accused person's safari on departure, so he decided to call his wife through the phone to get assistance from the Ministry of foreign affairs in the USA. While waiting for his wife to respond, a girl from KLM reception went with a computer and said that there was a government feast in the USA.

He went on to depose that thereafter he entered the customs area where he could get back his ticket. At the customs office, another person called him, at that time the passport and a ticket were in the hands of the immigration officer. The person who called the accused told him that the accused contravened the immigration law because he stayed four days on his 90 days visa. Then he was taken into the immigration office while another person carried the accused's ticket and passport. At the immigration office, he was informed that he was accused of trafficking in narcotic drugs and were there to search him, but at that place, only one of his bags (Exhibit P6) was at the said office while his other bag (blue and red bag) was not there.

Thereafter he was taken by force to another room where he was seated on a Sofa and three people searched Exhibit P6 and on his person while communicating with another person through the phone, and found nothing suspicious.

DW1 went on to state that, later Exhibit P4 was brought into the room, the three people conducted a search on it and they found some cultural items Exhibit P11 later on at 6:04 pm they successfully conducted an x-ray examination on DW1's stomach but found nothing. After an x-ray examination, they took him back to the first room where DW1 packed his bag (Exhibit P6) in the absence of his blue and red bag. That, thereafter they left the accused person in the room with one lady to watch him until about 08:00 am.

On 05/07/2018 in the morning he was taken to the Drugs Control and Enforcement Authority (DCEA) offices where he met PW7 who asked him about his family. He asked for an officer from his embassy which resulted in the officer called Rachel to go to the DCEA and left. Thereafter in the presence of about ten persons, PW7 took Exhibit P4 and put it on the table, he opened it with a screwdriver and a white flour substance came out. The director said that his narcotic drugs weighed 2 kilograms. In his evidence he disowned the bag but the director insisted that it belonged to him. After the

said exercise all people left while PW7 reassemble the bag. After a while PW11 and another officer went into the room. Later PW9 required him to sign against the things found in the bag, that he accused signed on a plastic bag and printed his thumbprint. On 06/07/2018 he stayed in the same room till on 07/07/2018 when he was taken to Central Police. DW1 stated that Exhibit P11 was in a blue and red bag and not in Exhibit P4, he did not sign on Exhibit P9 and also Exhibit P5 does not belong to him.

In their submissions, the counsel for both sides raised various issues including the burden of proof by the prosecution, maintenance of chain of custody, discrepancies in the prosecution's evidence, and legality in arrest and search. Also referred this court in a number of cases including **Ayubu Mfaume Kiboko and Another vs Republic**, Criminal Appeal No. 694 of 2020, CAT, (unreported), **Paulo Maduka and 4 Others vs, Republic**, Criminal Appeal No 110 of 2017, **Swahibu Ally Bakari vs Republic**, Criminal Appeal No. 309 of 2010 (Unreported), **Simon Kilowoko vs Republic**, 1989, TLR 159; **Jonas Nkize vs Republic** [1992]TLR 213, and **Zainabu Nassoro vs Republic**, Criminal Appeal No. 348 of 2015 (Unreported) I will consider these issues and authorities in the course of this judgment.

Having considered the evidence for both the prosecution and defence, as well as the submission by Counsels for both sides, it is now crystal clear, and a common ground that on 01/07/2018 at 22:00 hours the accused person arrived in Tanzania, through Julius Nyerere International Airport from Amsterdam by using a KLM Plane with traveling American passport No. 486529504. His stay in Dar Es Salaam was at Serene Beach Resort (Hotel) where he stayed for three days (Exhibit P7), and on the fourth day (04/07/2018), he was to travel from Dar es Salaam to Bologna Italy via Dubai. It is again common ground that the accused was supposed to check out at 10:30 am on 04/07/2018 in the morning but the accused requested for late checkout at the hotel reception with the reason that he was waiting for his guest so he could not leave early. After such a request, the Hotel charged him 22 USD. He paid by using a Visa card and was issued with a receipt. The accused person does not dispute that at around 4.00 pm, the awaited person arrived at the hotel to see him while carrying a bag. After 30 minutes, the accused and his friend left the hotel with three bags. He headed to JNIA for his departure before he got arrested. In this case, I think there are five issues for determination: - **One**, *whether the prosecution proved the case against the accused person to the hilt.* **Two**, *whether Exhibit P5 and remnants in exhibit P4 are narcotic drug.* **Three**, *whether the accused person was found trafficking in narcotic drugs.* **Four**, *whether the chain of*

*custody of exhibits P4 and P5 was maintained. **Five**, whether the defense raised any reasonable doubt against the prosecution case.*

Before the determination of the issues at hand, it is important to note that information against the accused person was cited in section 15(1) (a) of the Drug Control and Enforcement Act [Cap.95 R.E. 2019], read together with paragraph 23 of the First Schedule to and sections 57 (l) and 60 (2) of the Economic and Organised Crime Control Act [Cap.200 R.E. 2019]. But the proper citation should be section 15 (1) (a) of the Drug Control and Enforcement Act, No. 5 of 2015 ("the Drugs Act), as amended by Act No. 15 of 2017, read together with Paragraph 23 of the First Schedule to, and section 57 (1) of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002], as amended ("the EOCCA"). This comes because at the time the alleged offense was committed, the applicable laws were not gazetted Revised Edition 2019. In the current situation to term them R.E 2019 is curable under section 388 of the Criminal Procedure Act, [Cap 20 R.E 2022] since the same does not touch a substantial part of the provision and therefore did not prejudice the accused person's right as far as overriding principle is concerned.

Well, as far as the issues are concerned, I find it wise and convenient to start with the second issue. In the determination of the second issue, I will consider the testimony of PW1 basically on how he conducted laboratory

tests over Exhibits P4 and P5 as well as on the Analyst report (Exhibit P1). It is the evidence of PW1 that after receiving exhibits P4 and P5 which were labelled Exhibit A and A1 respectively from PW9 on 05/07/2018 at the CGC, he registered the same. He unwrapped Exhibit P4 from the Khaki paper and Opened Exhibit P5 which was sealed in a Khaki envelope and transparent nylon bag. He weighed powder substance (Exhibit P5) without packages by using an analytical balance and got 2.188 kilograms.

Thereafter he conducted a preliminary test on Exhibits P4 and P5 by using the Meckel test in the presence of PW9. He swabbed the dust on exhibit P4, put it on the plate, and mixed it with a chemical. Thereafter he drew a small sample and put it into another spot plate and mixed it with a chemical, and used the reference standard which was pure heroin, and put it in both plates. The colour of both samples changed from blue to green which is an indication of heroin. PW1 showed PW9 results of Exhibits P4 and P5 which showed that it was heroin Hydrochloride.

PW1's testimony further revealed that he then drew samples from Exhibits P4 and P5 and put them into two envelopes which he labelled with Lab Number 1959/2018 together with letters A and A1 respectively for the confirmatory test. On the same day, he prepared the two samples by dissolving them with the chemical Dichloromethane (DCM) also, he prepared

a reference standard which is pure heroin hydrochloride, and dissolved with DCM. Then he prepared a machine called Liquid Chromatography Mass Spectrometry (LCMS MS) and removed all samples which were therein. Then he put samples of Exhibits P4 and P5 by starting with the reference standard. After injecting the machine showed results of both samples A (sample of Exhibit P4) and A1 (sample of Exhibit P5) were narcotic drugs namely Heroin Hydrochloride.

The analysis of samples confirmed that the sample from exhibits P4 and P5 were narcotic drugs namely, Heroin hydrochloride weighed 2.188 kilograms. The said results led PW1 to prepare an Analyst report in the DCEA form 009(Exhibit P1) on 06/07/2018, the report which he signed and got approved by Chief Government Chemist (CGC) David L. Elias.

It is a trite law that the duty of an expert is to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the court to form its own independent judgment by application of these criteria to the facts proven in evidence. See the case of **Sylvester Stephano v. Republic**, Criminal Appeal No. 527 of 2016 CAT at Arusha (unreported).

Again, section 48A (2) of the Drugs Control and Enforcement Act, [Cap 95 RE 2019] provided for that,

'Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by a Government Analyst shall be admissible as evidence of the facts stated therein without formal proof and such evidence shall, unless rebutted, be conclusive.'

Based on the evidence and position of law cited above, PW1 is a Chemist (Senior Government chemist), authorized to conduct analysis via Government Notice No. 519 of 2010 and his main duty is to analyze various exhibits including narcotic drugs. What's more, I have considered that there is no evidence to contradict the evidence of PW1 in respect of how he analyzed samples of Exhibits P4 and P5. As PW1 discharged his duty to the court on his expertise in the analysis of samples in question and the results thereof, it is my considered view that the findings by PW1 as shown in Exhibit P1 is conclusive proof that Powder substance (Exhibit P5) is a narcotic drug namely Heroin hydrochloride weighing 2.188 kilograms. Also, the dust in Exhibit P4 is the narcotic drug heroin Hydrochloride.

Coming to the third issue, it is the evidence of the prosecution particularly PW2 which shows that on 04/07/2018, around 5:30 pm the accused person arrived with his luggage including Exhibit P4 at the JNIA. PW2 scanned Exhibit P4 and through the machine, he saw a Lady's hat, a small drum, small basket, a black wallet containing credit cards, cash money 10 Euro, Tsh, 95,000/= and USD 543, Masai shuka, framed all picture,

painted wall picture and one mobile phone make ZTE (Exhibit 11) together with dark green color which he suspected as an indication of a narcotic drug. Thereafter, PW2 informed PW6 about his suspicions, PW6 told PW2 that he should allow the accused person to pass as they can strategically arrest him at the immigration point. Thus, PW2 allowed the accused person to proceed. PW3 stated that on the material date around 5:45 pm, he received and served the accused person at the Fly Dubai desk as he was traveling from Dar es Salaam to Bologna Italy. The accused had two bags (Exhibits P4 and P6), at the Fly Dubai desk the bags were attached with tags, Exhibit P4 was tagged with the number FZ481177 and Exhibit P6 was tagged with the number FZ481176. After that, the accused checked in. He was handed over with two board passes and two tags corresponding tags of the two bags (Exhibits P4 and P6). Thereafter, he went to the immigration office.

The evidence shows that PW10 while serving the accused person at the immigration office by using a machine called Personal Identification Secure Comparison Evaluation System (PISCES), he identified and verified the accused person's information. He however learnt that the system could not allow the accused person to proceed. PW10 called PW12 who went to the desk and revealed from the system that, the accused person was wanted by the Drug Control and Enforcement Authority (DCEA). Therefore, PW12 took the accused back to the Fly Dubai desk where his bags were left. At the

Fly Dubai desk, the accused took his properties including Exhibit P4, after taking his bags, the accused was handed over to PW6 who took him to the DCEA office within JNIA while Exhibits P4 and P6 were under the custody of the accused person himself. PW6 stayed with the accused until the next morning when he and one D/C Lazaro took the accused and his bags to the DCEA offices Kivukoni where PW6 handed him and his bags to PW7.

PW7 conducted a search of the accused person in the presence of PW11, PW9, Iluminata Mbilinyi, and Erick Mwinuka, where among other items he retrieves Exhibit P5 within the plastic, lining the inner sides of Exhibit P4. After retrieving different items including Exhibit P5, PW7 seized the said items and listed them in Exhibit P9 which was signed by PW11, the accused person, PW7 himself, and two other persons WP Illuminata Mbilinyi and Erick Mwinuka.

On the other hand, the accused person while testifying as DW1 did not deny that Exhibit P5 was retrieved by PW7 from Exhibit P4, however, his denial is on ownership of Exhibit P4. He had defended that Exhibit was brought into existence and his knowledge in the room at the airport (JNIA). Also, he stated that he did not sign the certificate of seizure (Exhibit P9). DW1 stated further that, one of his bags was blue and red in color and he does not know where it was taken.

In determining this issue, I have it in my mind that the certificate of seizure ought to have been signed at the place where the search was conducted and in the presence of an independent witness. See the case of **David Athanas@ Makasi and Joseph Masima@ Shandoo Vs the Republic**, Criminal Appeal No. 168 of 2017, CAT at Dodoma (unreported).

Guided by the principle above, in the case at hand, it is the evidence of prosecution witnesses PW7 and PW11, search and seizure was conducted at the DCEA offices, Kivukoni Dar es Salaam. DW1 stated the same in his testimony. PW7 and PW11 went on to state that immediately after a search of Exhibit P4 and seizure of Exhibits P4 and P5, PW7 listed all seized items including Exhibit P4 and P5 in a certificate of seizure (Exhibit P9), and the same was signed there by PW7, PW11 who is independent witness, the accused person, Illuminata Mbilinyi and Erick Mwinuka.

It is very unfortunate that in the case at hand, during the testimony of PW7, PW11, and PW9 they were not cross-examined on the facts featuring the nonexistence of the accused's signature on Exhibit P9. Furthermore, during the testimony of PW2, PW3, PW6, PW12 as well as PW7, and PW9 were not cross-examined on the whereabouts of a black and red bag, and no any question were sprinkled showing that the accused's bag was black and red and not black and blue (Exhibit P4). It is a matter of principle

that, failure to cross-examine a witness on an important matter ordinarily implies the acceptance of the truth of the witness's evidence. See the case of **Issa Hassan Uki v. Republic**, Criminal Appeal No. 129 of 2017, Court of Appeal at Mtwara. See also cases of **Nyerere Nyangue v. Republic**, Criminal Appeal No. 67 of 2010, and **Damian Ruhele v. Republic**, Criminal Appeal No. 501 of 2007 (all unreported).

From this court's scrutiny, the defence that Exhibit P4 does not belong to the accused person, the accused person had a black and red bag instead of Exhibit P4, and that he did not sign a certificate of seizure, I find them to be an afterthought and misplaced before this court. Instead, it is my considered view that the accused person signed the certificate of the seizure (Exhibit P9) through which Exhibit P4 and P5 were seized. I should find that the said Exhibit P9 is valid in the eyes of the law particularly section **48 (2) (c) (vii)** of the Drugs Control and Enforcement Act, [Cap 95 RE. 2019]. I should find that, for the accused person to sign on Exhibit P9 is an acknowledgment that a narcotic drug namely Heroine Hydrochloride 2.188 kilograms was retrieved from his possession while he was in the course of trafficking the same from Dar es Salaam to Bologna Italy. See the case of **Song Lei v. The Director of Public Prosecution and Others**

Consolidated Criminal Appeals No. 16 A of 2016 & 16 of 2017) TZCA at Mbeya (Unreported). The third issue is answered in the affirmative.

With regard to the fourth issue, it is the prosecution evidence particularly PW7 and PW11 that the Exhibit P5 was retrieved from Exhibit P4. That both Exhibits were seized by PW7 in the presence of an accused person on 5th July 2018 through certificate of seizure Exhibit P9. On the same date, PW7 handed over the Exhibits to PW4. After receiving Exhibit P4, PW4 registered them in the Exhibits Register with a case reference number DCEA/IR/19/2018. Labelled Exhibit P4 with the letter 'A' and the powder in a nylon bag (Exhibit P5) with the letter 'A1'. She prepared packages for sealing while Exhibits P4 and P5 were under her custody. Thereafter she conducted the Packing exercise in the presence of the accused person, PW11, and other DCEA officers including PW9.

She sealed Exhibit P5 with a tape and marked it with case file reference DCEA/IR/19/2018 and 'A1'. After that, she packed the same in a khaki envelope and sealed it with an evidence envelope. Thereafter, she did put it into another khaki envelope and sealed it with an evidence seal. She wrote his name and date on the seal. Then the accused wrote his name and endorsed his handwritten signature as well as a thumbprint on the envelope. Also, PW11 wrote his name and signed. Thereafter, she covered Exhibit P4

with khaki paper and wrapped it with cello tape. After that, she sealed it with an evidence seal. Then labelled it with a case reference number DCEA/IR/19/2019 and marked A. Then, she wrote her name and date on the seal. The accused also wrote his name and endorsed his handwritten and thumbprint signatures on top. Also, PW11 wrote his name and signature on it. After that, around 3.30 pm PW4 handed over sealed Exhibits P4 and P5 to PW9 who is the officer of DCEA for the purpose of taking the same to the Chief Government Chemist (CGC).

After being handed over to Exhibits P4 and P5, PW9 took Exhibits together with Sample Submission Form Exhibit P2 and a request letter. On arrival at CGC, he was received by a chemist (PW1). PW9 submitted a letter of request for analysis to PW1 while exhibits were still under PW9's custody. It is the testimony of PW1 and PW9 that, after receiving PW9, PW1 registered the exhibits by Lab. No. 1959 of 2018. Thereafter, PW1 and PW9 together went to the laboratory where PW9 handed Exhibits P4 and P5 together with Sample Submission form (Exhibit P2) to PW1. PW1 read Exhibit P2 and compared it with Exhibits P4 and P5. After confirming Exhibit P2 and Exhibits P4 and P5, he opened them, took samples, and conducted a preliminary test on both Exhibit P4 and P5 including the weight of Exhibit P5. After getting the results he showed them to PW9. He then took samples from Exhibits P4 and P5 for a confirmatory test. He thereafter repacked the Exhibits in

question, sealed them with GCLA cello tape, and signed and stamped them with Chief Government Chemist Stamp. PW1 handed over exhibits to PW9 together with sample receipt notification form Exhibit P2 which was filled and signed by PW1 to show that the exhibits were received by GCLA.

PW9 stated further that after being handed over, he left and returned to the office at DCEA. On arrival, he handed over Exhibits P4 and P5 to PW4, the custodian of exhibits through dispatch on the same date 05/07/2018. PW4 stated that she received the said Exhibits from PW9 on the evening of 05/07/2018. The exhibits were sealed by GCLA seal, and they had Lab. No. 1959 of 2018, had the signature and stamp of CGC. After receiving them, she recorded them in the Exhibits Register with a case file reference number DCEA/IR/19/2018. After registering, she stored them in the Exhibits room. The key to the first door is kept by the head of the unit and the key to the second door is kept by her. None of them can access the Exhibit room without being given access by the key of the other. PW4 kept the said Exhibits P4 and P5 until on 06/04/2022 when she handed them over to Inspector Johari (PW8).

PW8 on her testimony stated that PW4 handed over Exhibit P4 and P5 at Anti-Drugs Unit Kurasini to her where they were kept by PW4 on 06/04/2022 around the morning, the handing over was done through the

exhibit register. Thereafter she took Exhibits P4 and P5 with other exhibits to DCEA where she kept them until 07/06/2022 around morning hours when she took out exhibits which were handed over to her by PW4 and brought them to Court to be tendered before the court.

On this issue, the prosecution referred this court to the cases of **Paulo Maduka & 4 Others, and Swahibu ally Bakari** (Supra) which is on Chronological documentation and sequence of events reading the exhibit from the time of seizure to the moment it is tendered before the court. Consequently, the prosecution complied with the principles laid in the cases above. On the other hand, is the submission of defense that, in the case at hand, there is no paper trail to prove the movement of the Exhibits in question, and refer this court to the case of **Zainabu Nassoro** (Supra)

I concur with the submission of counsel for both prosecution and defense to the effect that the importance of the integrity of the chain of custody of exhibits is the assurance of their reliability. It is there to show the movement of the exhibit from one person to the other from the time it is seized until the same is tendered to the court. The principle is well established in the case of **Paul Maduka and 4 others** (Supra) where the chronological documentation was insisted, and the same position was held in the cases cited above by both sides. However, documentation will not be the only requirement in dealing with exhibits. An exhibit will not fail the test

merely because there was no documentation, other factors have to be looked at depending on the prevailing circumstances in a particular case. See the case of **Chacha Mulimi Jeremiah Murimi and 3 Others vs Republic, Criminal Appeal No. 515 of 2015**, CAT at Mwanza (Unreported).

Therefore, it is a settled law that, currently a chain of custody can be proved by oral evidence. In the case at hand, the prosecution paraded five witnesses including PW7, PW4, PW9, PW1, and PW8 who dealt with Exhibits P4 and P5 from the time of seizure to the moment it was tendered to the court. All witnesses testified on how they handled, stored, and moved Exhibits in question from one point to another and this court is of the view that all the above witnesses are credible and reliable thus there is no reason of not to believe them. See cases of **Goodluck Kyando v. Republic**, (2006) TLR at page 363, **Marceline Koivugoi vs. Republic**, Criminal Appeal No. 469 of 2017 CAT at Dar es Salaam. But again, the prosecution produced documentary evidence to wit; Exhibits P9, P2, and P3 showing how Exhibits P4 and P5 were seized from the accused person, moved to PW1, and went back to PW4. Indeed, I find the argument advanced by the defense that the chain of custody of Exhibits P4 and P5 was broken for want of documentation is baseless.

Again, in the Case of **Abdallah Rajabu Mwalimu vs. Republic**, Criminal Appeal No. 367 of 2017(Unreported), Court of Appeal at Dar es Salaam. The Court of Appeal stated that;

*'.....even in the absence of paper documentation on how the pellets were handled from the time of the arrest until when they were tendered in court, the oral evidence of witnesses who described how the pellets were handled from arrest to the time the same was tendered in court was sufficient proof. We reiterate the position we stated in our decision in **Kadiria Kimaro** (supra) concerning the importance of oral evidence in explaining the chain of custody depending on the circumstances like the one obtained in this case.'*

The preposition above makes me arrive at the view that the prosecution through both oral and documentary evidence managed to prove that at any rate there was no possibility of one being tampered with Exhibits P4 and P5. In the upshot, I find that the chain of custody of Exhibits P4 and P5 is not broken.

Reverting to the fifth issue, it is evidence of DW1 that on the material date at Julius International Airport (JNIA), upon entering he handed his two bags, including Exhibit P6, and one bag was red and blue colour to the officers who were weighing the luggage, thereafter his passport was checked and allowed to proceed with his journey. DW1 alleged that he took his bags to KLM reception. That the officer of KLM could not get the confirmation of

the accused person's safari on departure, so the accused decided to call his wife through the phone to get assistance from the Ministry of foreign affairs in the USA. While waiting for his wife to respond, a girl from KLM reception went with a computer and said that there was a government feast in the USA. Later on, he was arrested at immigration offices for the violation of VISA terms, after arrest, he was taken by a lady and thereafter, he was searched on Exhibit P6. He was examined on his stomach through X-ray, and later on, Exhibit P4 was brought in, searched and cultural items were found while his blue and red bag was nowhere to be found.

DW1 stated that at 10:00 pm he asked and was allowed to go to the bathroom for the bath and he stayed in the room at the airport with a lady until the next morning. He stated that Exhibit P4 does not belong to him, and also there were two blue-black bags listed during committal proceedings but one of them tendered in court. This also featured in the defense submission and the Counsel added that in Exhibit P9, only one blue and black bag is listed.

The defence submission was to the effect that the prosecution failed to prove the case against the accused person in the required standard as provided in section 110 of the Law of Evidence Act, (Cap 6 RE. 2022), also the principle in the case of **Simon Kilowoko** (Supra).

While testifying, the prosecution witnesses stated that the accused person was traveling with Fly Dubai Airline. The evidence was supported by Flight ticket Exhibit P10, and before the arrest, he left his bags at the Fly Dubai desk (PW3). Also, it was alleged that the accused had two bags Exhibit P4 and P6 (PW2, PW3, PW6, PW7, and PW12). Also, it was stated that the accused was a custodian of his bags from the time of the arrest to the time they moved to DCEA offices in Kivukoni while he was under the control of PW6. Also it was stated in prosecution evidence that the accused was not searched at the airport. Again, it is the evidence of PW7, PW9, and PW11 who stated that Exhibit P4 was the only black and blue bag seized and listed in Exhibit P9. I have carefully studied the evidence from both sides and court records. I find that listing '*two bags blue and black coloured labelled red polo*' as shown at committal records and preliminary hearing is mere omission of not recording one of the bags which is black bag (Exhibit P6), in a real sense one cannot seize one blue-black bag and expected to produce two of them before the court. During the testimony of the above witnesses including PW2, PW3, PW6, PW7, PW9 and PW11, the defence side did not challenge by way of cross examination on the evidence regarding the searching accused at the airport, accused to be traveling with KLM and not Fly Dubai, accused to be under control of a lady after being arrested at airport, accused be allowed to go for bathing and leave back his bags, denial

of Exhibit P4 be his property and claim his bag to be black and red as raised during DW1 defence case. This court regards that the said evidence is crucial which need to be unblemished before the court, failure to challenge them, the court shall accept to be the truth on fact in issue. In the case of **Martin Masara vs. The Republic**, Criminal Appeal No. 428 of 2016, CAT at Mbeya (unreported), it was held that,

'It is trite law in this jurisdiction founded upon prudence that failure to cross-examine on a vital point ordinarily implies the acceptance of the truth of the witness evidence, and any alarm to the contrary is taken as an afterthought if raised thereafter.'

At this juncture, it is my considered view that, the evidence advanced by the accused person in respect of the matters stated above as far as the issue at hand is concerned is an afterthought as the same is raised at a later stage in his defense.

Also, it is the argument of defense that there is a contradiction between PW2 and PW1 where Exhibit P5 was kept within Exhibit P4. It is clear from the evidence of PW2 that he saw a dark green color in the bottom of the bag through the scanning machine and PW1 stated that powder was kept around the bag. Unfortunately, after perusing court records the said evidence does not feature in the evidence of PW1. However, the evidence of PW7 stated that he removed Exhibit P5 from plastic material around

Exhibit P4. It is common knowledge that not every inconsistency in the prosecution's evidence will cause their case to flop but it is upon the duty of this Court to decide whether it goes to the root of the matter. See the case of **Mohamed Said Matula v. Republic** [1995] TLR 3 and **Dickson Elia Nsamba Shapwata and Another v. Republic**, Criminal Appeal No. 92 of 2007 CAT (unreported).

This court hastens to say that, the above contradiction is minor and does not go to the root of the case as PW2 saw the said Powder through the scanning machine while the bag was closed and PW7 saw the same with naked eyes when he opened the bag.

Coming on the argument that there was no search warrant, arrest warrant, or search order issued in the process of arresting and searching the accused person, was backed in this argument with the case of **Mfaume Kiboko** (Supra), he stated that Exhibit P6 was not listed during committal proceedings.

On the other hand, the prosecution submitted that the search was legally executed and there was no need for a search warrant since the accused person was searched in person and not on his premises thus the case of **Mfaume Kiboko** (Supra) is distinguishable as the same was conducted under section 41 of the Criminal Procedure Act [Cap 20 RE. 2022].

And no search was conducted at the airport (JNIA) since it was stated by PW6 and PW15 that at that time they were making follow up with other suspects who were connected to the accused person at Kilimanjaro International Airport (KIA) thus causing a delay on search.

In my consideration, I agree with the state Attorney that, the case of **Mfaume Kiboko** (Supra) does not fit in the current circumstance since it involved a search that was conducted on the accused premises as the requirement posed under section 38(1) of the Criminal Procedure Act [Cap 20 R.E. 2022] (the CPA) read together with paragraphs 1(a), (b) and (c) and 2(a) and (d) of Police General Order (PGO) No. 226. It is true that the accused was arrested and searched on the property in his immediate control of him for the order made by ACP Salmin Shelimo (PW15) as per evidence from PW6, PW7, PW9, and PW15. It is the evidence of PW9 that PW15 was their superior in the DCEA and for the time being, he was in the rank of Senior Superintendent of Police (SSP). By virtue of being an SSP one can execute an arrest or search without a warrant and he is an officer who is authorized to issue orders to other officers to execute the arrest and search of the accused person. Therefore orders made by PW15 to PW6 and PW7 concerning the matter at hand are valid and lawful orders.

Again, it is the evidence of PW6 and PW15 that on the material date, PW15 was at Kilimanjaro International Airport making follow-up with other suspects connected to the drug case and suspected to be connected with the accused person. In that sense PW15 was not able to issue a written order for the arrest and search of the accused person. This also caters as to why there was a delay in conducting the search on the accused person. Thus, I do not hesitate to hold that the circumstances in the case at hand fall under the ambit of section 42 (2) of the Criminal Procedure Act, [Cap 20 R.E. 2022].

There is an argument that Exhibit P6 was not listed during the committal proceedings. Exhibit P6 was not made known to the accused during committal proceedings and the same was not listed during the Preliminary hearing. The accused person does not dispute Exhibit P6 to be his belonging, that is, his personal property. I think the same cannot be point of controversy in this case, and surely, it cannot make a great deal in the charge of trafficking in narcotic drugs. It remains to be the property of the accused person and its existence in evidence does not prejudice the accused person's right. To that end, it is my settled view that the issue at hand is answered negatively.

Now coming to the first issue, having regard to the above-answered issues, I am of the considered opinion that this issue is answered positively, that is the prosecution has managed to prove the case against the accused person to the hilt. I, therefore, find Lonie Lionel Rayford guilty of the offense charged with, and I hereby convict the accused person for the offense of trafficking in narcotic drugs contrary to section 15 (1) (a) of the Drug Control and Enforcement Act, No. 5 of 2015 ("the Drugs Act), as amended by Act No. 15 of 2017, read together with Paragraph 23 of the First Schedule to, and section 57 (1) of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002], as amended ("the EOCCA"). Ordered accordingly.



Court:

G.N. Isaya
Judge
26/05/2023

Judgment delivered this 26th May, 2023 in the presence of the accused person, and his advocate Omari Kilwanda, Mr. Mafuru, State Attorney, Hon. Chikawe, Judge's Legal Assistant and Saida, BC.



G. N. Isaya
Judge
26/05/2023

SENTENCE

The accused person has been convicted of the offence of trafficking in narcotic drugs contrary to section 15 (1) (a) of the Drug Control and Enforcement Act, No. 5 of 2015 ("the Drugs Act), as amended by Act No. 15 of 2017, read together with Paragraph 23 of the First Schedule to, and section 57 (1) of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002], as amended ("the EOCCA").

In sentencing the accused persons, I have considered the submission by Mr. Mafuru, State Attorney, that narcotic drugs has a very adverse effect and all people in the society become victims, it hinder social-economic development of the country and damages the country reputation. I consider too mitigation of the accused person through Mr. Kilwanda, defence Counsel that accused person is aged is 70 years old, he is the first offender and depended by his family.

Having all in my mind, I am guided by the relevant legislations that is the the Drug Control and Enforcement Act, No. 5 of 2015 as amended by Act No. 15 of 2017, the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002], as amended and the Tanzania sentencing Manual for Judicial officers.

Since the convict is offender who is of the old and advanced age and being the first offender, but also having in mind that the narcotic drug pose great danger to the society, healthy and economy of the country, I hereby sentence the accused person Lonie Lionel Rayford to serve twenty years (20) imprisonment. It is so ordered.




G. N. Isaya
Judge
26/05/2023

Right of Appeal Fully explained.




G. N. Isaya
Judge
26/05/2023

Order:

1. Exhibits P4 and P5 be destroyed in accordance with the Drugs and Enforcement Act, [Cap. 95 R.E 2019] with its Regulations (GN. No 173 of 2016.
2. Since Exhibits P6, P8 and P11 are personal belongings of the accused person let them be returned to the convict.




G. N. Isaya
Judge
26/05/2023