

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
CRIMINAL SESSION CASE NO. 57 OF 2016

REPUBLIC
VERSUS
RUKIA D/O KHAMIS MOHAMED

JUDGMENT

05/09/2023 & 15/09/2023

SIMFUKWE, J.

The accused person **Rukia d/o Khamis Mohamed** stand charged with the offence of Trafficking in Narcotic Drugs contrary to **section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act, [Cap 95 R.E 2002]** as amended by **section 31 of the Written Laws (Miscellaneous Amendments) Act No. 6 of 2012**. It was alleged by the prosecution that on 21st day of December, 2013 at Kilimanjaro International Airport area within Hai District, in Kilimanjaro Region, the accused was found Trafficking 1471.15 grams of Narcotic Drugs namely Heroin Hydrochloride valued at Sixty-Six Million Two Hundred and One Thousand, Seven Hundred and Fifty Shillings only. (66,201,750/=). The accused person pleaded not guilty to the charge.

During the trial, the Republic was represented by Mr. Hassan Nkya Senior State Attorney who was being assisted by Mr. A. Chavula, Ms Lilian

Kowero, Ms Kyusa, Ms Kabu and Ms Itike learned State Attorneys. Mr. David Shilatu, learned Counsel appeared for the accused person.

During the preliminary hearing it was not disputed that on the fateful day the accused person Rukia Khamis Mohamed was travelling to Enugu Nigeria via Adis Ababa Ethiopia by Ethiopia Airlines Flight No. ET825. She was issued with Air Ticket No. 0714645546091 (exhibit P1), had a passport No. AB340605 (Exhibit P2), a boarding pass with flight No. ET 0825 of 21/12/2013 (exhibit P3) and carried one bag. That, the accused was supposed to depart to Enugu Nigeria via Adis Ababa Ethiopia through Kilimanjaro International Airport.

In proving the charges against the accused person, the prosecution paraded a total of seven (7) witnesses: F. 1157 D/Sgt Hashimu **(PW1)**, Kenedy James Kaseke a retired Commissioner of the Drugs Control Commission **(PW2)**, Shaban Said Chalamila, **(PW3)**, WP 3052 D/Cpl Jane **(PW4)**, Thereza John Kahatono a Government Chemist officer **(PW5)**, F. 5878 D/Ssgt Mtoo **(PW6)** and Ahmed Machalula **(PW7)**. The prosecution also produced eleven (11) exhibits to support their case.

It was alleged by **PW4 WP 3052 D/Cpl Janeth** that on 21/12/2013 while on duty at Kilimanjaro International Airport at the departure lounge at around 02:00 a.m., one passenger went there with her bags. That, the said passenger looked scared and went straight to the check point desk. She checked her bag which was medium size. As the said passenger was heading to the Immigration desk/office she looked somehow scared and not familiar of where she was going. PW4 stopped her and asked her to show her ticket and passport. Inside the ticket there was a boarding pass. PW4 read them and found the name of that passenger to be Rukia Khamis

Mohamed. While looking at the said documents, one Ahmed Machalula the Airport Security Incharge of the shift (PW7) went there and said that he was looking for a passenger called Rukia Khamis Mohamed as he wanted to go with her to the luggage inspection room (HBS). The accused responded to him that she was the one, then the three of them headed to the HBS room. While going there, Assistant Inspector Shufaa and Cpl Amini saw them and followed them to the HBS room (inspection room). Upon arrival at the HBS, they found a bag on the table. Ahmed told PW4 that the Xray machine had detected something abnormal inside the bag of that passenger. The accused was asked whether that bag belonged to her, she replied that it was her bag. Assistant Inspector Shufaa also asked the accused if that bag was her property, Rukia said that it was her property. They checked the tag on the bag it was written Mohamed. The accused was required to open her bag and took out everything. Then, the bag was placed in the X-ray machine again, still the machine showed that there was an image inside it. Since the bag was empty, PW4 used her hands to press the sides of the bag. In so doing, PW4 felt that there was something at the back of the bag but could not tell what it was. So, PW4 requested that passenger that they should tear the bag to see what was inside. She agreed, so PW4 used a small knife to cut and tore the bag at the back. In so doing, they saw a plastic board and then an envelope came up as PW4 pulled the plastic board. Then, PW4 tore a small hole at the corner of the said envelope and saw some powder which she suspected to be drugs. PW4 then ordered the passenger to return her belongings in the bag. The plastic board and the envelope containing powder also remained in the bag as she did not remove it completely. The accused returned everything inside the bag and she closed her bag. Then,

PW4 ordered the accused to go with her to KIA police station. They went together with Assistant Inspector Shufaa, Cpl Amini and the suspected passenger who carried her bag.

PW4 testified further that at the police station she searched the suspect thoroughly. PW4 removed everything in the bag including the khaki envelope wrapped with yellow cello tape. PW4 also removed the plastic board which had coca cola words. PW4 conducted the search under supervision of Assistant Inspector Shufaa, Cpl Amini and Ahmed, except when PW4 searched the body of the suspect when she remained with her alone. The search was done in the office of the OCCID.

After the search, PW4 filed a certificate of search and seizure and listed the seized items being: one bag brownish in colour, one envelope wrapped with a yellow cello tape containing powder suspected to be narcotic drugs, one passport, electronic ticket of Ethiopian Airline, boarding pass of the suspect, vaccination card, luggage tag written Mohamed, voter's card, visa card, female clothes and various foreign currencies. Thereafter, PW4 gave the suspect the certificate of search and seizure so that she could read it. She read it, signed and printed it with a thumb. The seizure note was also signed by Ahmed Machalula and Cpl Amini. The suspect and her bag were left with Assistant Inspector Shufaa while PW4 left to her working station at the Airport.

PW4 tendered a certificate of search and seizure (Hati ya upekuzi na kukamata vielelezo) dated 21/12/2013 with Ref. KIA/IR/233/2013. It was admitted as exhibit P8.

Evidence of PW4 was corroborated with the evidence of **PW7 Ahmed Machalula** who stated among other things that on 20/12/2013 he was

in the night shift. That it was in the midnight at 02:00 hrs at the HBS room while doing the screening of luggage, one bag passed and he could not identify some of the items in it. The said bag was brown in colour. As he had suspected the said bag, he took it, placed it on the table and recorded the name of the owner from the luggage tag which was Mohamed the surname. Then, he started looking for the owner and went out of the HBS. On the way he met Afande Janeth with a lady passenger talking. PW7 told Janeth that he was looking for a passenger called Mohamed. As he said so, the lady with Janeth said that she was the one. He checked her travelling documents to ascertain the names. PW7 verified that she was the one, so, he told them to accompany him to the HBS. After reaching there, Afande Shufaa and Amin joined them. So, they were five of them. Since PW7 had already told Janeth the problem, he explained to Shufaa and Amin that in the bag there was an item which the machine could not identify. Thus, they wanted to see it by bare eyes.

PW7 stated further that he asked the said passenger whether the bag on the table is her property and she admitted that the bag belonged to her. PW7 looked at the documents she had and the tag on the bag to tally the names, and the names tallied. Then, the bag was returned to the X-ray machine and they all looked at it, they could not identify one of the items in it. Then, PW7 asked the passenger to open her bag, she opened the bag and Afande Janeth inspected it. She could not find anything. The bag was emptied and Afande Janeth took the bag to the X-ray machine while empty and the same image was seen. Afande Janeth pressed the bag all over by using her hands. She discovered something at the back of the bag. Thus, she decided to cut part of the bag to retrieve what was there. In so doing she saw a khaki envelope, wrapped with a yellow cello tape.

Janeth punched that envelope a bit at the corner and discovered that it had powder substance.

It was testified further by PW7 that, they left together with that passenger to KIA police station where search was conducted and the envelope was removed from the bag. One Elisha a custom officer weighed it; it was found to be 1.8 kilograms. The bag and the items in it were seized. PW7 signed the certificate of seizure and went to proceed with his duty.

PW1 F. 1157 D/Sgt Hashimu a police officer and investigator at Kilimanjaro RCO's office, testified inter alia that on 21/12/2013 at 13:00 hrs he was in his office when the RCO Ramadhani H. Ng'anzi instructed him to be around waiting for police officers from Kilimanjaro International Airport (KIA) police station who were expected to bring a culprit arrested at KIA. The said police officers arrived at about 13:05 lead by one Assistant Inspector Shufaa Mbagaa. They were accompanied by the suspect and exhibits. Afande Shufaa entered the RCO's office together with the suspect and exhibits and gave a report to the RCO. The RCO ordered PW1 to receive the said exhibits and keep them in the strong room. Afande Shufaa handed over the exhibits in writing. That, the said exhibits were a brown bag middle size with a label of Mequitum. Inside the bag, there was an envelope wrapped in yellow cello tape and it contained powder substance suspected to be narcotic drugs. The said envelope was placed inside the bag in a false bottomed style with a piece of hard plastic material. Also, the said bag had various clothes, one hand bag silver in colour, body splay, lotion and wallet which had voter's card bearing the name of the suspect, bank card in the name of the suspect and currencies of different countries (Tshs 2000 note, Congo currency, Zambia, Malaysia, Hong Kong and Botswana).

PW1 went on to state that, there was also a yellow card, passport No. AB340605, boarding pass and the tag and Air ticket all bearing the name of the suspect Rukia Mohamed. They filled the handing over certificate and signed it. The suspect also certified by writing in the certificate her name and signature. After receiving the exhibits, PW1 left with the RCO to the strong room to keep the exhibits. PW1 took the exhibit register PF16 and filled in it the exhibits as serial number 20 with reference number KIA/IR/233/2013. PW1 listed the exhibits and the name of the accused person showing that he received them from Assistant Insp. Shufaa.

PW1 narrated further that on 28/12/2013 at around 04:00 hrs he was required to prepare the exhibit to be taken to the Chief Government Chemist at Dar es Salaam. PW1 called a witness one Shaban Chalamila (PW3) and the accused was taken from the police cell to witness the packing of the exhibit. The witness was introduced to the accused. Then, the bag was taken out and the accused identified it. An envelope was removed from the said bag. The said envelope was sealed properly by using a cello tape at a place where it was torn at the Airport so that the powder could remain intact. PW1 placed that envelope in a big khaki envelope and sealed every angle with red paper and cello tape to strengthen it. The accused signed and dated on the envelope. The witness Shaban Chalamila also signed on the envelope, the RCO signed, stamped and dated it. After that, the exhibit (envelope) was returned inside the bag and then it was returned to the strong room.

On 29/12/2013, the RCO ordered PW1 to prepare himself so that on 30/12/2013 he could handover the exhibit to F. 5878 D/SSgt Mtoo to take it to Dar es Salaam to the office of the Chief Government Chemist. On

30/12/2013 around 05:00 a.m. they went to the strong room and took the bag, removed the tag and opened it. They took from it an envelope which had already been packed and labelled KIA/IR/233/2013 with "A" letter as its reference and handed it over to Afande Mtoo. PW1 filled in the PF16 again to show that the exhibit had been removed and handed it over to Afande Mtoo who signed and dated it. The same was done, on 30/12/2013 at 05:20 a.m. Then, PW1 returned the tag on the bag and kept it in the strong room. Thereafter, they left to KIA escorting Afande Mtoo who left to Dar es Salaam. At around 21:00 hrs, they went to KIA to receive Afande Mtoo and at 22:00 hrs they arrived at the strong room and returned the exhibit in the bag and filled the handing over in PF16. The said exhibit came with a seal, signature and Lab. No. 1056/2013 from the Chief Government Chemist.

PW1 tendered the handing over certificate dated 21/12/2013 in respect of KIA/IR/233/2013 as exhibit P4, the exhibit Register PF16 with serial number 20 indicating the record of KIA/IR/233/2013 handing over as exhibit P5, the brown bag together with the envelope and other items were admitted as exhibit P6 collectively and the police statement of PF 18076 Asst. Inspector Shufaa dated 21/12/2013 as exhibit P11.

PW2 Kenedy James Kaseke told the court that he was a retired Commissioner of Drugs Control Commission. That, on 04/08/2014 while in his office he received a letter from the RCO of Kilimanjaro Region. The said letter was attached with a report from the Chief Government Chemist. The RCO's letter was requesting for the valuation of the drugs Heroin Hydrochloride which weighed 1471.15 grams. The letter also showed that the said drugs were involved in a police case file KIA/IR/233/2013 and the name of the accused was Rukia Khamis Mohamed. After reading the

said request, PW2 looked at the data base in order to know the market value of Heroin Hydrochloride in December 2013. Thereafter, he did the calculation and found that the value was Tzs 66,201,750/=. Then, he prepared a certificate of value of Narcotic Drugs and Psychotropic substance. He signed it and recorded his statement.

PW2 tendered a certificate of value of Narcotic Drugs and Psychotropic substances dated 04/8/2014. It was admitted as exhibit P7.

PW3 Shaban Said Chalamila stated that on 28/12/2013, he was at Kaloleni when one Cpl Fred phoned him and required him to go to the RCO's office. At around 04:01 pm, he took a motorcycle and went to RCO's office where he found one Hashim (PW1), Cpl Fred, one WP and one civilian woman who was unknown to PW3. PW3 was told that the said woman was a suspect, so they called him to witness the packing of exhibit. After introduction, Hashim opened the strong room and a bag was removed and placed on the table. It was a medium size bag brown in colour. The bag was opened and envelope khaki in colour which was wrapped in yellow cello tape was removed. The said envelope had some powder in it and PW3 was told that the said powder was suspected to be narcotic drugs. Hashim told PW3 to witness the packing of that parcel. It was packed so that it could be sent to the Attorney General. It was packed in a khaki envelope which was tied with a sisal rope and on each corner labelled with a red paper. PW3 signed on those papers, Rukia Khamis Mohamed also signed on the envelopes. Then, PW3 was allowed to leave.

PW5 Theresa John Kahatono a chemist working with the Chief Government Chemist testified that on 30/12/2013 she received the exhibit from Afande Mtoo from RCO's office at Kilimanjaro who was in the

company of officials from Anti Drugs Unit. PW5 labelled the exhibit with Lab. No. 1056/2013. She was requested to test the contents of the said exhibit if the same were drugs, its type and weight. PW5 weighed the exhibit and found it to have 1471.15 grams. After weighing the exhibit, PW5 took a small amount of it as sample and did the preliminary test and confirmed it to be drugs known as Heroin Hydrochloride. Then, she prepared a report which was sent to the RCO of Kilimanjaro region.

PW5 tendered the report from the Chief Government Chemist dated 30/01/2014 in respect of KIA/IR/233/2013 which was admitted as exhibit P9.

PW6 D/SSgt Mtoo's testimony supported the testimony of PW1 and PW5. That on 30/12/2013 PW6 was given the seized powder substance purported to be Narcotic Drugs by PW1 D/SSgt Hashim. He took them to the Chief Government Chemist Laboratory Agency at Dar es salaam for scientific test. PW6 went to Dar es Salaam by flight and he was taken to KIA under escort. At the Government Chemist Laboratory Agency, the exhibit was received by PW5 Thereza John Kahatono (PW5) who labelled it with laboratory number 1056/2013. The exhibit was weighed and found to be 1471.15 grams. Then, PW5 took a small amount of the suspected drug for confirmatory test. The remaining powder was returned in its original envelope and closed by using a cello tape. The said envelope was returned in the khaki envelope which was closed by using a cello tape and signed on every corner of the envelope and tied with a rope. On the same date D/SSGT Mtoo returned to Moshi with the said exhibit by flight and handed back to PW1 D/SSGT Hashim in the presence of the RCO. In the same manner, PW6 was received at KIA under escort. PW6 signed in the exhibit Register PF16 to prove that he had returned the exhibit. PW6

tendered a letter dated 30/12/2013 in respect of the file with reference number KIA/IR/233/2013 from the Chief Government Chemist addressed to the RCO of Kilimanjaro. It was admitted as exhibit P10.

In her defence, the accused person Rukia Khamis Mohamed testified as DW1. She denied all the allegations levelled against her. She testified that on 21/12/2013 she was at KIA on her way to Nigeria to visit her fiancée one Chinedu Aike. She left Dar es Salaam on 17/12/2013 by bus to Moshi where her aunt received her at Moshi bus stand and took her home at Soweto. She stayed there for two days till on 20/12/2013 when she left to Njia Panda along Airport Road where she booked a guest house and slept till midnight at 01:00 a.m. when she woke up, prepared herself and went to KIA. At KIA she followed all procedures which included immigration procedures where her passport was checked and stamped. She said that she had a suit case which had black and white strips. She went to departure area where she met a gentleman whom she showed her passport and ticket. After looking at the documents of DW1, the said gentleman told the accused person to go to immigration office and her bag/suit case was left with the said gentleman. At the immigration, DW1's passport was stamped; her finger prints were taken and then she was told to go to the departure lounge. She did not go back to take her bag because the gentleman who received it, said that he will place it in a belt.

It was contended further that, DW1 went to the check point where she met a man and a woman. The woman asked her name and where she was going, DW1 replied the questions. The said woman asked for DW1's passport and ticket, DW1 gave her the same. She recorded by writing and inserted in the computer. Then, DW1 passed through the screener and went to the departure lounge. After about an hour, a man and woman

who were different from those at the check point, went to DW1. DW1 identified the said woman as Janeth. They followed her and Janeth told her that they needed her in the interrogation room. They went to that room and found three bags and travellers too. DW1's bag was not there. Janeth told DW1 that there was one bag among the three bags which had the name of Mohamed which had drugs and that it was hers. DW1 denied and told Janeth that her bag was not among the three bags.

It was alleged further by DW1 that she did not witness her bag being placed in the screen belt. That, all the three bags were open and she did not witness the same being opened. The man who was in the company of Janeth phoned the police and two police officers, a man and woman went in police uniform. None of them was introduced to DW1. They talked to Janeth and thereafter picked the three bags, one was taken by Janeth, the other by a police man and the third was taken by a woman police. They also left with DW1 and other two passengers to KIA police station on foot. They were separated and locked up. It was between 03:00 a.m. and 04:00 a.m. About half an hour, DW1 was taken out to another room where she found her fellow passenger together two police officers who were introduced to her as Afande Shufaa and Amini. Then, Shufaa told DW1 that there was a bag/suit case which was written Mohamed, they tore it and found drugs. DW1 averred that when the said bag was torn, she was not there. Thus, DW1 told Afande Shufaa that the bag did not belong to her as her bag had white and black strips.

DW1 narrated further that there was a khaki envelope on the board which Shufaa told her that there were drugs in it. Shufaa went out and left DW1 with Amini and the two passengers. Shufaa came back later and called Amini and went aside to talk. Then, they came back and Shufaa required

the other passengers to follow her. After 10 to 15 minutes Shufaa went back and found DW1 giving her statement to Amini who recorded it. After her statement was recorded, she was then locked up until 11:00 a.m. Then, Shufaa went and took her out to the police counter and handed over her hand bag. Thereafter, they went outside and boarded a land rover pickup in which she stayed at the back with a police woman. Shufaa sat in front with the driver. They drove to Moshi Central Police station where she was taken to the counter and her three names were recorded. She was then locked up until 04:00 p.m. when one Mtoo a policeman took her to another room where she met policemen called Hashim and Fred. Hashim took a paper and pen and interrogated her. She was again returned in the lockup where she stayed till 31/12/2013 when she was arraigned before the court where the charge was read against her.

DW1 denied to have signed any seizure certificate. She asserted that she knew the danger of drugs as the same may cause one to be jailed for 30 years imprisonment and even life imprisonment once found guilty. So, she cannot dare to do such business which will cost her life. She prayed this court to let her free because she had never committed the offence.

In his final submission Mr. Shilatu the learned Defence counsel stated among other things that chain of custody was broken as the court was not shown the handing over between D/Cpl Janeth and Insp. Shufaa. He also submitted that PW1 and PW4 gave contradictory evidence. That, PW1 produced exhibit P1 (sic) while the accused was arrested by PW4 and the exhibit was searched by PW4. Thus, exhibit P1 (sic) was supposed to be tendered by PW4.

The learned counsel raised another contradiction as to where the accused was going, whether Lagos or Adis Ababa. That, while the boarding pass and baggage tag showed that the destination was Adis Ababa, the accused was going to Lagos. He stated further that the accused was going to Lagos then Enugu but there was no evidence to prove that the accused carried the suspected substances. In addition, it was submitted that the suspected bag had only one universal name MOHAMED.

In his reply, Mr. Mwinuka learned State Attorney averred inter alia that the prosecution had managed to prove the offence against the accused person beyond all reasonable doubts. He said that if there are doubts the same are minor flimsy doubts which do not affect the roots of the case. That, they produced documentary and testimonial evidence showing that the accused person was found trafficking narcotic drugs. Testimonies of PW1, PW4 D/Cpl Janeth, PW7 Ahmed Mwacharema (sic), exhibit P1, exhibit P3 (Air ticket, boarding pass and luggage tag collectively), exhibit P8 seizure certificate signed by the accused and exhibit P11 the statement of Insp. Shufaa are relevant. That, they had proved that the bag which is exhibit P6 the property of the accused person was found with the suspected narcotic drugs.

As to whether proper chain of custody was established, Mr. Mwinuka submitted that they had proved that chain of custody was intact by arraigning witnesses and documentary evidence. That, the labels on exhibits, exhibit forms and case number show clearly how the suspected drugs were handled carefully.

Concerning the contradiction between PW1 and PW4 and that the accused did not sign the certificate of seizure (Exhibit P8) raised by the learned

defence counsel, it was submitted that the same were afterthoughts as the defence side did not cross examine on the raised issues. That, PW1 was conversant with the said exhibit as custodian of the same while PW4 testified as the person who seized the exhibit, so there was no contradiction.

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

Thus, issues for determination in this case are:

1. *Whether the suspected flour substances were proved beyond reasonable doubts that the same were narcotic drugs namely heroin hydrochloride or diacetylmorphine hydrochloride; as well as the weight and value of the same.*
2. *Whether exhibit P6 (the brown bag) together with the seized narcotic drugs (the flour substances in a khaki envelope) were possessed by the accused person and whether the same were being trafficked.*
3. *Whether chain of custody of the seized narcotic drugs was not broken.*
4. *Whether the prosecution managed to prove the case against the accused person beyond reasonable doubts.*

Starting with the first issue *Whether the suspected flour substances were proved beyond reasonable doubts that the same were narcotic drugs namely HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE; as well as the weight and value of the same;* the same was proved by **PW5 Thereza John Kahatono** a chemist who examined the alleged suspected substances and prepared a report (exhibit P9) to that effect. That the said flour like substances weighed 1471.15 grams and that the same were Narcotic drugs known as HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE. Exhibit P9 which is a report which establishes that the suspected flour substances were narcotic drugs known as heroin hydrochloride, was not objected by the learned defence counsel during the hearing. The weight and value of the narcotic drugs was proved through the testimony of **PW2 Kenedy James Kaseke** a retired Commissioner of the Drugs Control Commission who assessed the value of the narcotic drugs and produced a report (exhibit P7) to substantiate the same. Exhibit P7 was also not objected by the defence counsel. Since exhibits P9 and P7 were not objected, thus, based on evidence of PW2, PW4 and PW5; and Exhibits P6, P7, and P9, I am of settled opinion that the fact that the seized suspected flour substances were narcotic drugs namely HEROIN HYDROCHLORIDE or DIACETYLMORPHINE HYDROCHLORIDE has been proved beyond reasonable doubts.

On the 2nd issue *Whether exhibit P6 (the brown bag) together with the seized narcotic drugs (the four substances in a khaki envelope) were owned (possessed) by the accused person and whether the same were being trafficked;* PW4 WP CPL Janeth and PW7 testified among other things that they asked the accused whether the bag on the table belonged

to her, the accused admitted that she was the owner of that bag in the presence of Assistant Inspector Shufaa and Amini. Prior to opening the suspected bag, PW7 looked at the names on the documents of the accused person and found that the same tallied with the names on the luggage tag on the suspected bag (exhibit P6). Then, the accused person was ordered to open her bag. In her defence, the accused denied to have admitted that exhibit P6 belonged to her. She averred that her bag had white and black strips and that the suspected bag was opened in her absence.

It is trite law that the accused's story does not have to be believed, but only to raise reasonable doubts on part of prosecution as it was held in the case of **Maruzuku Hamisi V.R [1997] TLR 1** which quoted the decision of the Court of Appeal of Tanzania in the case of **Madenge v. R [1969] EA 211**, which held that:

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

In his final submission Mr. Shilatu learned counsel alleged inter alia that chain of custody of the exhibit was broken as there is no documentary evidence to prove the handing over between Cpl Janeth and Assistant Inspector Shufaa because the court was told that after being arrested the accused was sent to Assistant Inspector Shufaa. The prosecution resisted the averment of the defence counsel and stated that the roots of this case are based on two issues: Whether the bag exhibit P6 containing the envelope which contained drugs was seized from the accused and

whether after the seizure of exhibit P6, the chain of custody was maintained.

On the first issue, I agree with Mr. Mwinuka that the prosecution side produced the documentary and testimonial evidence of PW4 D/Cpl Janeth, PW7 Ahmed Machalula and exhibit P11 the statement of Insp. Shufaa. That evidence proved that the accused was found in possession of exhibit P6 collectively, and prior to opening it, the accused identified it as her property. Thereafter, other procedures followed.

Concerning documentary evidence, as rightly submitted by Mr. Mwinuka they produced exhibit P8 the seizure certificate signed by the accused and exhibit P1, P2 and P3 respectively (Thus, the air ticket, boarding pass and luggage tag). Exhibit P6 had a tag which resembles the contents of exhibit P1 and P3. PW7 explained in his testimony that Mohamed was the surname of the accused person. In addition, the flight number, travelling date and destination (KIA to Emene Airport Enugu via Adis Ababa) of the accused person was the same on exhibit P6, P1 and P3. Thus, evidence adduced by the prosecution proved beyond reasonable doubts that the accused Rukia Khamis Mohamed is the owner of exhibit P6 which was in her possession as the same had her names.

The learned defence counsel also raised the issue that the luggage tag had only one common male name "**Mohamed.**" Respectfully to the learned counsel, although the luggage tag has one name only, the flight information on it tallied with the electronic ticket and the boarding pass of the accused person, which leads to the conclusion that the said tag belonged to the accused person and no one else. Also, logic guides me that having in mind the size of the luggage tag, where the names of the

passenger are long, it is impossible to write all the names. As a matter of practice, it's the surname and initials of the names of the passenger which normally appear on the luggage tag.

On the second issue whether chain of custody of exhibit P6 was maintained; Mr. Mwinuka submitted that they had proved that chain of custody was intact. That, all the prosecution witnesses who were involved in the handling of exhibit P6 were called. Thus, PW1, PW3, PW4, PW5, PW6 and exhibit P11. In addition, the prosecution tendered exhibit P4, P5, P6, P8, and 10.

Concerning the allegation that chain of custody was broken between PW4 and Asst. Insp. Shufaa, evidence of PW4 and PW7 is crystal clear that, while heading to the HBS room, Afande Shufaa and Cpl Amini followed them. Therefore, the seizure of exhibit P6 was done in the presence of Asst. Insp. Shufaa and Amini. All of them went to KIA police station together with the accused person and the seized exhibits. At KIA police station PW4 conducted the search in the presence of Insp. Shufaa, PW7 Ahmed and Cpl Amini. At page 26 of the typed proceedings PW4 stated among other things that she conducted the search of the seized exhibits under supervision of Insp. Shufaa. After filling the seizure certificate, the suspect and the exhibits were left with Insp. Shufaa who did the handing over at the RCO's office. Thus, there was no handing over between PW4 and Insp. Shufaa simply on the reason that they were together.

According to evidence adduced by both parties, this court is of considered opinion that the prosecution managed to prove that exhibit P6 was possessed by the accused person. I am aware that the accused person has no duty to prove his innocence. However, in this case the accused did

not state why this case was fabricated against him and not any other passenger. That could have assisted to raise doubts on part of prosecution. Otherwise, evidence of PW4, PW7 and Insp. Shufaa (eye witnesses) and exhibit P1, P2, P3 and P6 prove possession of the seized narcotic drugs by the accused beyond reasonable doubts.

On the issue whether the seized narcotic drugs were being trafficked by the accused, due to the fact that the accused do not dispute that she was travelling on the material date, it is beyond reasonable doubt that the seized narcotic drugs were being trafficked by the accused. **Section 2 of the Drugs and Prevention of Illicit Traffic in Drugs Act, [Cap 95 R.E 2002]** defines Trafficking in Narcotic Drugs as: "*importation, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, 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 any offer.*" Emphasis added

In the circumstances, it goes without saying that the accused person in this case was found possessing and exporting Narcotic drugs.

The third issue is *Whether chain of custody of the seized narcotic drugs was not broken.* In narcotic drugs cases, the prosecution is duty bound to prove beyond reasonable doubts that chain of custody of the seized narcotic drugs was not broken in order to guarantee fair trial to both parties. The prosecution must marshal all witnesses who came across the exhibit and documents which dealt with transaction of that exhibit should be produced to support testimonies of the marshalled witnesses.

As already noted herein above, Mr. Shilatu the learned defence counsel contended that chain of custody of exhibit P6 was broken between PW4 and Insp. Shufaa. The learned State Attorney was of the view that chain of custody was not broken. With all due respect to the learned Defence counsel, I reiterate that PW4 seized exhibit P6 in the presence of Assistant Insp. Shufaa and other officers. She conducted the search of the said exhibit under supervision of the said Assistant Insp. Shufaa who handed over the said exhibit and the suspect to PW1 D/ Sgt Hashim. Therefrom, the paper trail of exhibit P6 was maintained from PW1 D/Sgt Hashim, PW6 a police officer who took it to PW5 the Government Chemist. PW1 labelled the exhibits and listed them in the exhibit register. Thereafter, the RCO assigned PW6 to take the suspected narcotic drugs to the Chief Government Chemist's laboratory at Dar es Salaam by flight. PW6 went to KIA by escort to and from. At Dar es Salaam the suspected narcotic drugs were handed over to PW5 who labelled the suspected narcotic drugs prior to confirmatory test, analysed the same and prepared a report (exhibit P9). The khaki envelope of the suspected narcotic drugs was closed by using a cello tape on each opening and handing over. Thus, the same could not be tampered with easily. In the circumstances, there was no time when chain of custody of the seized narcotic drugs was broken.

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

"It seems to us, decisions of the court reiterating the duty to ensure the integrity of chain of custody, provisions of section 39 of the Anti-Drugs Act which require the police officers who seize suspected drugs to make a full report of all the particulars of such arrest or seizure to his immediate official superior, the Police General Orders,

and the HANDBOOK FOR THE POLICE OFFICERS, 2010 are all designed to ensure both the prosecution and the accused persons of the procedural justice in terms of fairness.”

In another case of **Maligile Maingu V. R, Criminal Appeal No. 432 of 2021** at page 14, first paragraph, the Court of Appeal of Tanzania recently held that:

"The chain of custody has to be demonstrated throughout the process from the seizure up to when it is tendered in court. The significance of the chain of custody is to give integrity to the exhibits involved to ensure reliability.”

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

The last issue is whether the prosecution managed to prove the case against the accused person beyond reasonable doubts.

The Ladies and Gentleman Assessors who sat with me at the trial were of the opinion that the case against the accused was not proved beyond reasonable doubts. All of them based their opinions on the fact that the suspected bag was identified by using one name only. That is MOHAMED the surname of the accused herein. On the basis of the findings herein above in respect of the same, with respect, I dissent from the majority opinions of the Ladies’ and Gentleman assessors.

In conclusion, as I have already found out herein above, the prosecution managed to proved all the ingredients of the offence of Trafficking in

Narcotic Drugs against the accused person on the required standard, thus beyond reasonable doubts.

I therefore convict the accused Rukia Khamis Mohamed with the offence of Trafficking in Narcotic Drugs contrary to **section 16 (1) (b) of the Drugs and Prevention of the Illicit Traffic in Narcotic Drugs Act, Cap 95 R.E 2002**; as amended by **section 31 of the Written Laws Miscellaneous Amendment) Act No. 6 of 2012** as charged.

Dated at Moshi this 15th day of September 2023.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

15/09/2023

