

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
CRIMINAL SESSION CASE NO. 24 OF 2015

REPUBLIC
VERSUS
JOHN S/O CHIBUZO

JUDGMENT

08/09/2023 & 20/09/2023

SIMFUKWE, J.

The accused person **John s/o Chibuzo** 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 23rd day of November, 2013 at Kilimanjaro International Airport (KIA) area within Hai District, in Kilimanjaro Region, the accused was found Trafficking 3406.84 grams of Narcotic Drugs namely Heroin Hydrochloride valued at Two Hundred and Four Million, Four Hundred and Ten Thousand, and four hundred Shillings only. (204,410,400/=). The accused person pleaded not guilty to the charge.

During the trial, the Republic was represented by Mr. A. Chavula Senior State Attorney who was being assisted by Ms Verediana Mlenza, learned

State Attorney while Mr. Ibrahim Komu and Ms Diana Solomon, learned Counsels appeared for the accused person.

In the preliminary hearing the following facts were undisputed:

1. The names of the accused person and personal particulars.
2. That on the fateful day the accused person John Chibuzo was travelling to Rome Italy via Adis Ababa Ethiopia by Ethiopia Airlines Flight No. ET 0814 and ET 0702. He was issued with electronic Air Ticket No. T. 30714182041880 and ETK 07141820418804.
3. That, the accused was arrested and taken to KIA police station.
4. That, accused's passport No. AO3188361, his boarding passes with numbers 064 and 103 together with two luggage tags with numbers 03522K661022 and 0071E1614157 were taken by police officers.
5. That, the accused was charged and arraigned for the charged offence.

In proving their case, the prosecution called a total of ten (10) witnesses: F. 1157 D/Sgt Hashimu **(PW1)**, E.1974 Cpl Chediel **(PW2)**, Salome John Rukiko **(PW3)**, F. 5878 D/SSgt Mtoo **(PW4)**, ASP Leonidas Ng'ende **(PW5)**, Gloria Gadiel Mmary **(PW6)**, Kenneth James Kaseke who was the Commissioner for Drugs Control Commission **(PW7)** WP 3052 D/Cpl Janeth **(PW8)**, F. 2742 D/Cpl Yohana **(PW9)** and Machibya Ziliwa Peter a Government Chemist officer **(PW10)**. The prosecution also produced seven (7) exhibits to support their case.

PW3 Salome John Rukiko, the Aviation Security Officer (TCAA) stated that on 23/11/2013 while in office she received a phone call from Gloria Mmary who was at the International departure check point. The said Gloria asked PW3 to go at the departure check point as there was a

luggage which had some unknown items in it. PW3 went at the departure lounge and found the bag on the table, at the check point where one Novatus Simfukwe was checking the said bag. Simfukwe told PW3 that he had hand checked the said bag but nothing was recovered. However, when the bag was placed in the X-ray machine it still detected an abnormal thing in it. The passenger who was the owner of the suspected bag was in front of the bag. PW3 took the bag and emptied it and then placed it at the X-ray machine and the two sides of the bag showed abnormal things. On seeing that, PW3 phoned Afande Janeth and required her to go there. WP Janeth arrived and tore the bag on each side where the abnormal things were seen. On each side, WP Janeth found a parcel wrapped in a sponge material. Police officers were informed and they went there. Thereafter, WP Janeth tore one of the parcels and saw some powder which she suspected to be drugs. They informed the airline officers of that passenger. By then a police motor vehicle had arrived so they left with the suspected passenger to KIA police station where a thorough search was conducted and the two parcels were taken and weighed by the TRA officer. The parcels were found to be 4 kilograms. That, there was a certificate which a police officer filled in the items which were recovered and PW3 signed it. In the seized bag there were other items like clothes, shoes and other several items.

PW3 identified the certificate of seizure, the accused herein, the seized bag and the two parcels alleged to have been found in the bag.

PW3's evidence was supported with the evidence of **PW6 Gloria Gadiel Mmary** who testified that on 23/11/2013 she was on duty as a screener. While on screening process, she screened one bag of the passenger and detected something from the sides of the bag which was unknown. Then,

PW6 asked the searcher one Novatus Simfukwe to open it so that they could see what was inside. The passenger, the owner of the suspected bag was around in the inspection place. Then, Simfukwe asked the said passenger to open the bag. Simfukwe inspected the bag and found nothing. They screened an empty bag and saw items unknown to the machine. They searched again and in the course of searching it closely, they discovered it had hand stitches. Then, PW6, called the Incharge one Salome Rukiko (PW3) to come over. Salome went there and phoned WP Janeth who was on duty. WP Janeth tore the place where the suspected bag was hand stitched. She found on one side one parcel wrapped in a sponge material and on the other side, she found a similar parcel which was wrapped in a sponge material. After such discovery, the items found in the bag were returned into the bag and WP Janeth, PW6 and the passenger left the place together with the bag.

PW8 WP 3052 D/Cpl Janeth testified that on 23/11/2013 she was on duty at Kilimanjaro International Airport (KIA) together with two other police officers, D/Cpl Yohana and PC Neema. PW8 was the incharge of the group. While there, she was called by the security shift Incharge one Salome Rukiko that she was needed at the International departure lounge X-ray. Upon arrival, she found Salome Rukiko, Gloria the screener, Erasto Mkisi the boarding inspector, Novatus Simfukwe the searcher and a male passenger. PW8 was informed by Salome Rukiko that there was a bag of the passenger which was suspected. PW8 then asked the passenger if he knew the suspected bag, the said passenger admitted that the bag belonged to him. The said bag was placed on the X-ray machine and showed some unknown items. PW8 decided to inspect the bag properly by using her hands. She discovered that the bag was torn on its sides and

re-stitched by hand. PW8 then sought a permission from the accused to tear the said bag, he allowed her. Upon tearing it on one side she found that there was a cloth attached to the bag side and stitched, she opened it and discovered something like a small pillow with sponge material. PW8 did the same to the other side of the bag and found a similar pillow. She decided to open a small part of one pillow and saw some powder stuff inside.

PW8 testified further that, she asked the said passenger to give her his passport, boarding pass and the ticket. She introduced herself to the accused and put him under arrest as she suspected him of trafficking narcotic drugs. She then phoned the OCS one ASP Leonidas Ng'ende who told her to wait for the motor vehicle and take the suspect to KIA police station. Thereafter, a police motor vehicle arrived with one Cpl Chediell. They took the suspect from International departure lounge to KIA police station. At KIA police station, they found the OCS, other police officers, security officer and TRA officer. Thereafter, an intensive and thorough search was conducted in the CRO office by Cpl Chediell, in the presence of Salome Rukiko (PW3), Afande OCS (PW5), the suspect John Chibuzo, security officer, TRA officer and Cpl Yohana.

PW5 ASP Leonidas Ng'ende testified that on 23/11/2013 he was in his office at KIA police station as Officer Command Station when he received a phone call from WP Janeth (PW8). PW8 informed PW5 that there was a passenger who was arrested with a bag suspected to have drugs. PW5 sent police officers with a motor vehicle with PW2 to go and bring the suspected passenger together with his bag and witnesses involved in that scene. Then, the accused and his bag together with the involved team were taken to KIA police station. PW5 asked the accused his name, he

said he is called John Chibuzo from Nigeria travelling to Adis Ababa with Flight No. ET 814, Ethiopian Airline. PW5 ordered PW2 to search the suspected bag and the accused physically and then fill the certificate of seizure. PW2 searched the seized bag and the accused, thereafter filled the certificate of seizure in front of PW5 and the witnesses. In the cause of searching the bag, PW2 recovered two packets wrapped in the sponge material. Inside the packets there was powder stuff like flour, off white in colour. PW5 ordered a case to be opened and the case file was given KIA/IR/213/2013.

PW5 stated further that, he took the bag (exhibit P2) and locked it in the safe. The accused's statement was recorded, then he was locked in the police cell. Later, PW5 phoned the RCO of Kilimanjaro Region one ASP Ng'anzi informing him of the incident. Next day on 24/11/2013 in the morning, PW5 took the accused and his bag to the RCO's office in a police vehicle together with Cpl Jonathan, PC Adinani, the driver and PW8. The RCO ordered for the handing over to be done. PW5 handed over the bag together with the two parcels which had in it powder stuff suspected to be drugs, the passport of the suspect, his Air ticket, boarding pass, cash Euro currency, identity cards, vaccination card, bank cards, leather shoes, rubber shoes, set of clothes and other items as listed in the handing over certificate. After handing over, they left to KIA.

PW1 F. 1157 D/Sgt Hashim a police investigator in the office of the Regional Crimes Office (RCO) of Kilimanjaro at the Drugs Control Unit; gave a testimony that on 24/11/2013 while in his office was called by the RCO who instructed him to stay around the office ready to receive exhibits as there was a suspect arrested at Kilimanjaro International Airport (KIA). At around 01:00 p.m. police officers from KIA arrived at the RCO's office

under the supervision of one Leonidas Ng'ende, in the company of the accused together with exhibits. That, the process of handing over was done between ASP Leonidas Ng'ende and D/SSgt Mtoo who received the exhibits on behalf of the RCO. PW1 witnessed the handing over. ASP Ng'ende handed over to D/SSgt Mtoo a brown bag with U shape zip. Inside the bag there were two packets made of sponge material which were extracted from two sides of the bag, several clothes of the accused person, two cell phones, a passport, Air ticket, bank cards, cash foreign money Euro 45, 20 cents, 50 cents and vaccination card. During the exercise, Cpl Yohana, Cpl Fredrick and DC Nsangarufu were present.

PW1 stated further that after handing over exercise, he left with the RCO, SSP Ramadhani H. Ng'anzi, D/SSgt Mtoo together with the bag and went to the exhibit strong room. At the exhibit room, the RCO handed over to PW1 a brownish bag. PW1 received and registered it in the Exhibit Register, PF 16. He then signed to have received the same in the register. He kept the bag in the strong room and closed it.

Later, PW1 was instructed by the RCO to prepare the exhibit, the two packets of sponge material which were suspected to be drugs ready to be taken to the Government Chemist. He took out the accused from the cell to the RCO's office in a room where exhibits are prepared. PW1 took the two sponge packets from the strong room and prepared them in the room where the accused was. He packed them in two brown envelopes and labelled them A and A1, wrapped them in one envelope and labelled on top of it KIA/IR/213/2013. The accused also signed on top of the envelope and the pen used was red marker pen. After that, the exhibit was returned in the strong room and the accused was returned to the police cell. On 01/12/2013, PW1 prepared a letter requesting the Government Chemist

to test the suspected drugs. On 02/12/2013, at around 05:00 a.m. PW1 went to the strong room together with the RCO and D/SSgt Mtoo whereby he took and handed over to D/SSgt Mtoo the envelope with exhibit A and A1 with reference No. KIA/IR/213/2013 enclosed in one envelope tied up with a rope. D/SSgt Mtoo signed in the exhibit Register PF 16 to have been handed over the said envelope. PW1 and the RCO escorted D/SSgt Mtoo to KIA. D/SSgt Mtoo left to Dar es Salaam by flight and he came back the same day at around 21:00 hrs (09:00 p.m.). PW1 received him at KIA and he came back with the same exhibits. They drove to RCO's office the same night; the exhibits were returned already examined. PW1 again recorded in the Exhibit Register PF 16 that the exhibits were returned from the Chief Government Chemist and kept in the strong room. The said exhibit was with its label KIA/IR/213/2013 and contained the envelopes A and A1, with signature of the accused and tightened with a rope just as it was packed, but it had the Chief Government Chemist's stamp seal and his signature. It was also given Lab. No. 945/2013. All these were visible on the envelope.

It was testified further by PW1 that on 28/01/2014, he received the report from the Chief Government Chemist which proved that the drugs were Heroin, weighing 3,406.84 grams. On 29/9/2014, PW1 received a certificate of value of drugs which certified that the drugs were worth Tzs 204,410,400/=.

PW1 went on to state that on 24/4/2017 at 09:00 a.m. he removed the exhibit from the exhibit room and recorded in the PF 16 the movement of the Exhibit. PC Raymond was handed the said exhibits to take to court. That, the said exhibits are in respect of this case.

PW1 tendered the exhibit register as exhibit P1, which contained in it, entries at serial No. 17 showing the handing over and movement of exhibits namely, brownish bag together with its contents. Also, PW1 tendered exhibit P2 collectively; a brown bag with various items together with an envelope containing two envelopes A and A1 (Heroin Hydrochloride).

PW2 E. 1974 Cpl Chediel's evidence was that on 23/11/2013 while in office he was summoned by one ASP Ng'ende and instructed to go to the airport at the passengers' departure lounge as there was a person arrested there. PW2 took the motor vehicle with a driver and went towards departure area where he found police officers and security officers who included D/Cpl Janeth (PW8) and D/Cpl Yohana (PW9). The said police officers were together with one passenger with his luggage. Then, they left with the said passenger, police officers and security officers and went to KIA police station. At KIA police station the OCS instructed them to search the said passenger. They searched the bag of the passenger which had already been torn at the departure lounge on both sides. Thus, they expanded the torn area properly to see what was inside. They found two parcels wrapped in sponge material. One was found at the left side and the other on the right side. They also emptied the bag by removing all the belongings of the accused like clothes, camera, shoes, cell phones etc. After searching the accused properly, the OCS ordered PW2 to open a case of trafficking drugs against the said passenger, the accused herein. PW2 opened the case file with Ref. No. KIA/IR/213/2013. Also, PW2 filled the Certificate of Seizure which was admitted as exhibit P3. After he had finished what was ordered by the

OCS, PW2 handed over the bag, the accused and the seizure certificate to the OCS, ASP Ng'ende.

PW4 F.5878 D/SSgt Mtoo testified that on 24/11/2013 while in his office, he was called by the RCO of Kilimanjaro in his office. PW4 was told to get prepared to receive a suspect arrested at KIA. The said suspect was then brought by the OCS of KIA police station, accompanied with other policemen. The suspect was brought together with a brown bag. The OCS of KIA one ASP Ng'ende entered the RCO's office and gave a report concerning the suspect. Thereafter, all of them including the accused and his bag were called in the RCO's office. The suspected bag was carried by the OCS when they entered in the RCO 's office. After receiving the report from the OCS, PW4 was instructed by the RCO to receive the exhibits namely: brownish bag which had in it two parcels of sponge material, passport, two boarding pass, two tags, two cell phones make Nokia, shoes, clothes, bank cards and various identity cards. Then, PW4 prepared the handing over certificate (exhibit P4) and signed it. The accused person, ASP Ng'ende the OCS also signed. After handing over the items, PW4 took them to the exhibit keeper one D/Sgt Hashim for safe custody. D/Sgt Hashim received them in the presence of the RCO and listed them in the Register PF 16.

PW4 stated further that on 2/12/2013 he was handed over the exhibit which was sealed in a brown/khaki envelope to take it to Dar es Salaam. The handing over was done in the strong room where exhibits are kept. The handing over was done by the exhibit keeper one D/Sgt Hashim. Thereafter, PW4 was escorted to KIA by the RCO, D/Sgt Hashim and other police officers. At Dar es Salaam International Airport PW4 was received by police officers from the Anti Drugs Unit who took him to the Chief

Government Chemist office. The exhibit was received, a form was filled and the exhibit was given a Laboratory Number 945/2013. Then, a person from the laboratory went there and took the exhibit. PW4 together with those who escorted him went to the laboratory. In the laboratory the exhibit was opened and weighed. Exhibit A weighed 1525.77 grams and A1 weighed 1881.07 grams which in total were 3406.84 grams. After weighing the exhibits, the stuff in the said exhibits was tested and found to be Heroin. After the test they took a sample in each parcel, A and A1 and repacked them as they were, in an envelope and resealed again. The envelope was tightened by the rope, stamped and signed by the Chemist. Then, PW4 took the exhibit back to Moshi by flight on the same day. The RCO, D/Sgt Hashim and other police officers received PW4 and drove back to the RCO's office where he handed over the exhibit to D/Sgt Hashim. It was registered in the Exhibit Register PF 16 (exhibit P1) to prove that the same was returned.

PW7 Kenneth James Kaseke a retired Commissioner for Drugs Control Commission, told this court that on 08/4/2014 while in office he received a request letter from the RCO of Kilimanjaro which requested for value of the drugs as per attached report of the Chief Government Chemist. The report showed that the drugs were Heroin Hydrochloride weighed 3406.84 grams in respect of the case KIA/IR/213/2013. He computed the market value of the drugs with the weight and found that the value was Tzs 204,410,400/=. After getting the value of the drugs, PW7 prepared a valuation certificate showing the value of the narcotic drugs as requested. PW7 tendered a certificate of value of Narcotic Drugs and Psychotropic substance dated 4/8/2014 in respect of police case file KIA/IR/213/2013 as exhibit P6.

PW9 F. 2742 D/Cpl Yohana stated that on 23/11/2013 he was on duty at Kilimanjaro International Airport at the domestic lounge. He left the domestic lounge and went to the international departure lounge where he found WP Janeth (PW8), Erasto Mkisi and Novatus Simfukwe together with a passenger with his bag. PW8 was searching the accused's bag and told him that in that bag they had found powder substances suspected to be drugs. So, PW8 asked him to go to the airline staff and tell them to cancel the passenger's trip. PW9 did as instructed and then went back to PW8. By then a police motor vehicle had arrived with Cpl Chediel (PW2), thus, they boarded it. They arrived at the CRO and search took place. On 24/11/2013, the passenger was taken to the RCO of Kilimanjaro where the OCS, ASP Ng'ende handed over the accused and his bag.

PW10 Machibya Ziliwa Peter a Government Chemist testified that on 2/12/2013 he received a guest one Afande Mtoo (PW4) who was from the RCO's office at Moshi. PW4 had exhibits which were to be tested, he had a letter PF 180 which requested for the test of exhibits to prove whether the suspected flour was drugs or not. Also, the said letter requested for the weight of the exhibits. The said exhibit was in respect of police case file KIA/IR/213/2013. PW10 said that he first weighed the exhibit and found it weighing 3406.84 grams. Then, he tested the exhibits and was satisfied that the suspected powder was Heroin Hydrochloride. Thereafter, PW10 repacked the exhibits and sealed them with a cello tape, signed on top of it, stamped it and handed it over to Afande Mtoo. PW10 also prepared a report on 07/01/2014 and signed it. Thereafter, the report was signed by the Chief Government Chemist on 08/01/2014 and addressed to the RCO of Kilimanjaro (exhibit P7).

That was the end of the prosecution case.

In his defence, the accused person Chibuzo John testified on oath as DW1. He testified that he is a resident of Rome Italy working with Cooperative Company as a driver. On 10/11/2013 he came to visit his girlfriend one Doreen who lives in Dar es Salaam. He landed at KIA on 10/11/2013 and went to Arusha in a hotel which he did not remember its name. He stayed in the hotel for two days before going to Dar es Salaam. He went to Dar es Salaam by Dar Express Bus and met his girlfriend at the bus stand who took him to the hotel. He stayed with Doreen in Dar es Salaam until 20/11/2013 when he went back to Arusha and stayed in the lodge. On 23/11/2013, DW1 left to KIA. At KIA, he checked in his luggage. He said that he had two bags, the big bag which was grey in colour and a hand bag which was black in colour written carpisa which contained his passport, Euro currency, working documents, canon camera, two phones Nokia make and other items. On his way to the departure lounge there was a queue of other passengers in front of him who were also checking in. When it was DW1's time, he was checked but a man at the Xray machine told him to stand aside. After about two minutes, the said man called the police officers who went there and started to interrogate DW1 as a suspect. He asked them to give him his bag so that he could leave, they did not give him his bag, instead they directed him to follow them. They started arguing and later they told him that he was a drug dealer. They called another lady staff and directed her to bring the checked in big bag of DW1. They removed the tag from the big bag and searched both bags. Then, they asked DW1 to close his bags and took him to KIA police station.

DW1 stated further that at KIA police station they started beating him and undressed him. He was crying; thus, he was taken into the lock up. He

stayed there for one day till 24/11/2013. Next morning, they brought him to Moshi where he was put in the police lock up. After a while, a police officer went to take him out of the lock up. The said police officer went with a document and told DW1 to sign, DW1 asked them what was he signing? They insisted that he should sign. He therefore signed. He was told that he was suspected of drug trafficking after he had signed the said documents. He stayed in the lock up for about 8 days. On 02/12/2013, they took him out and brought to him his big and small bag. He found some of his items missing. The small hand bag was empty.

In short, the accused person denied to have committed the offence. He said that the bag which was tendered before the court was not the small bag which he was found with at the departure lounge. He stated further that he was required to sign a document which he did not know what was written in it. However, he identified some of his personal items which were seized in his small bag at the Airport.

In his final submission, Mr. Chavula learned Senior State Attorney averred inter alia that the prosecution had managed to prove the offence against the accused person beyond all reasonable doubts. That, they called ten witnesses and tendered exhibits which included documents to prove their case. That, evidence of PW3, PW5, PW8, exhibit P3 and P4 was confession evidence which was not disputed by the defence side. He cited the case of **Patrick Sanga vs. Republic, Criminal Appeal No. 213/2008**, in which the Court of Appeal of Tanzania at page 7 held that:

"Under section 3(1) (a) (b) (c) and (d) of the Evidence Act, Cap 6, a confession to a crime may be oral, written, by conduct and/ or a combination of all these or some of these. In short, a confession

need not be in writing and can be made to anybody provided it is voluntary made."

Apart from that, the learned State Attorney also urged the court to find that exhibit P2 collectively belonged to the accused person despite his defence that all items found in exhibit P2 belonged to him except the bag and the two parcels (small pillows).

Mr. Chavula referred to another case of **Nyerere Nyabue vs. Republic, Criminal Appeal No. 67/2010**, (CAT) in which at page 5 last paragraph it was held that:

"As a matter of principle, a party who fails to cross examine a witness on a matter is deemed to have accepted that matter and will be stopped from asking the trial court to disbelieve what the witness said."

However, the learned State Attorney noted some contradiction on part of prosecution case. That, PW2 testified that he was the one who weighed the drugs at KIA police station while PW3, PW5 and PW8 testified that the drugs were weighed by the TRA official. Also, PW2 said that the bag (exhibit P2) had a tag which contradicts what was said by PW3, PW5, PW6 and PW8.

It was the opinion of Mr. Chavula that the above noted contradictions are very minor since they do not go to the root of the case as the same were caused by lapse of time since the commission of offence.

He said that if there are doubts, the same are minor flimsy doubts which do not affect the roots of the case.

As to whether proper chain of custody was established, Mr. Chavula submitted that in the circumstances of this case, the same was of less significance. He made reference to the case of **Kileo Bakari Kileo and 4 Others vs. Republic, Consolidated Criminal Appeal No. 82/2013 and 330/2015** (unreported) in which the Court of Appeal at page 21-22 held that:

"We wish to point out in this case that the issue of chain of 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 and it is also in evidence that when the stuff were packed and sealed before they were sent to the Chief Government Chemist, PW6 was present."

The learned State Attorney was of the view that the circumstances of the cited case are similar to our case at hand.

In her final submissions Ms Diana Solomon, the learned Defence counsel stated among other things that the prosecution had failed to prove that exhibit P2 the bag was the property of the accused. That, exhibit P2 was not the actual bag which the accused was found in possession as the design of the bag was not stated. The learned counsel was of the opinion that evidence of the CCTV could have proved without doubts that the arrested bag which was brought to court was actually that of the accused person. She cemented her submission with the case of **Jeremiah Shemweta vs. Republic [1983] TLR 228** where it was held that:

"The discrepancies in the various accounts of the story by the prosecution witnesses give rise to some reasonable doubts about the guilt of the appellant;"

Ms Diana pointed out the discrepancy in respect of evidence of PW3 and PW4 as to who among them was the first to open the bag.

Concerning chain of custody, Ms Diana contended that it was broken between PW4 and PW10 as PW10 said that he handed over exhibit P2 to PW4 but there was no handing over note between the two witnesses.

Having considered evidence of both parties, it is worth to note that, it is a cardinal principle of criminal law that the prosecution has the onus to prove its case against the accused person beyond reasonable doubts. In this case, in order to prove its case beyond all shadows of doubts, the prosecution ought to prove all the ingredients of the offence of trafficking in Narcotic Drugs which 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 P2 (the brown bag) together with the seized narcotic drugs (the flour substances in two sponge parcels) 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.*

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;* according to the adduced evidence, PW1 tendered before the court the seized suspected narcotic drugs (exhibit P2). PW10 Machibya Ziliwa Peter a Government chemist who examined the suspected substances and prepared a report (exhibit P7), testified inter alia that the results of the confirmatory test which he conducted were that the suspected drugs were Heroin Hydrochloride. Evidence of PW10 was supported by evidence of PW4 who took the suspected narcotic drugs to the Chief Government Chemist Laboratory and handed over the exhibit to PW10. The weight and value of the narcotic drugs was proved through the evidence of PW7 who did the valuation of the narcotic drugs. PW7 stated that the request letter from the RCO of Kilimanjaro was attached with the report of the Chief Government Chemist which showed that the drugs were Heroin Hydrochloride weighed 3406.84 grams. He elaborated how he got the value of Tzs 204,410,400/= and tendered exhibit P6 to substantiate his evidence. Exhibit P2, P6 and P7 were admitted without being objected by the defence side. In his defence, the accused simply denied the possession of the suspected drugs but he did not dispute the fact whether the same were narcotic drugs or not. Thus, I am satisfied that the type, weight and value of the narcotic drugs was proved through the evidence of PW1, PW4, PW7 and PW10; together with exhibit P2, P6 and P7, beyond reasonable doubts.

Concerning the 2nd issue *whether exhibit P2 (the brown bag) together with the seized narcotic drugs (the four substances in two sponge parcels)*

were owned (possessed) by the accused person and whether the same were being trafficked; PW6 Gloria Gadiel Mmary was the eye witness who narrated how the Xray machine detected some strange things in the bag of the accused. She said that she knew that the accused was the owner of the suspected bag because she saw him placing his bag in the Xray machine. That, the searcher one Novatus Simfukwe asked the accused to open his bag so that he could search it, and the accused opened his bag. PW3 Salome Rukiko who was the Aviation Security Officer shift in charge, when called at the scene by PW6, she found the owner of the suspected bag in front of the bag. PW3 asked the accused whether the bag belonged to him, he told him that the bag belonged to him. Then, PW3 called WP Janeth (PW8) who asked the passenger if he knew the suspected bag, the accused answered that the bag belonged to him. When she wanted to tear the said bag, PW8 sought permission from the accused who allowed her. After she had discovered some suspicious parcels inside the suspected bag, PW8 requested the accused to give her his passport, boarding pass and the ticket. From the travel documents, PW8 noted the names of that passenger to be John Chibuzo.

In his defence, the accused identified his items like clothes, shoes, phone set and other items which were in the bag which had sponge packets containing narcotic drugs, which the accused said that did not belong to him.

It is settled that the accused has no duty to prove his innocence. His duty is to raise reasonable doubts on the prosecution case which is not a heavy one. In criminal cases when the burden of proof shifts to the accused, the standard of proof is on balance of probabilities. See the case of **Joseph John Makune V. R [1986] TLR 44**. In another case of **PASCAL**

MWITA AND 2 OTHERS VS REPUBLIC [1977] TLR 54 the Court held that:

"The Appellants' duty was not to prove that their defense were true. They are simply required to raise a reasonable doubt in the mind of the Magistrate and no more."

The issue which follows therefore, is to see whether the defence of the accused in respect of possession of exhibit P2 raises any doubt on the prosecution case. Since the accused was caught by PW6 while screening his hand luggage red-handed, I think the defence of the accused in respect of possession of exhibit P2 is a mere denial of the offence. In addition, the accused person acknowledged in Exhibit P4 that the items which were handed over to PW4 were found in his possession. Therefore, evidence tendered by the prosecution proves without any doubt that the seized narcotic drugs were found possessed by the accused person. Evidence of PW3, PW6, PW8, exhibit P2, P3 and P4 is relevant.

On the next issue whether 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

As already noted herein above, during the preliminary hearing, the accused did not dispute the fact that he was travelling to Rome-Italy on the material date. Thus, due to the fact that the accused does not dispute

that he was travelling on the material date, and that he was found red-handed placing his bag in the Xray machine, it is beyond reasonable doubt that the seized narcotic drugs were being trafficked by the accused. In other words, 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 call all witnesses who came across the exhibit and tender documents which dealt with transaction of the seized narcotic drugs.

In her final submission, Ms Diana averred that chain of custody in this case was broken between PW4 and PW10.

The learned State Attorney was of the view that chain of custody in the case at hand was of less significance. He supported his argument with the case of **Kileo Bakari Kileo** (supra). In his evidence, PW4 stated among other things how he took the suspected narcotic drugs to the Chief Government Chemist. He tendered a certificate of receiving the exhibit by the Government Chemist dated 2/12/2013 which was admitted as exhibit P5. In my considered view, exhibit P5 confirms that there was documentary handing over between PW4 and PW10. Moreover, PW4 alleged that when he arrived at Dar es Salaam, he was received by police officers from the Anti Drugs Unit who escorted him to the Chief Government Chemist. The said police officers were present when PW4

handed over the exhibit to PW10. After the test, PW4 was escorted back to the Airport.

Apart from PW4 and PW10, other witnesses who dealt with the seized narcotic drugs testified before the court and tendered documents to substantiate how chain of custody of the exhibit was maintained. PW1 D/Sgt Hashim, PW5 ASP Leonidas Ng'ende (OCS of KIA police station), PW4 a police officer who took it to PW10 the Government Chemist and PW8 gave corroborative evidence. PW5 handed over the exhibits to PW4 who was assigned by the RCO in the presence of PW1 the exhibit keeper, PW9 Cpl Yohana and other police officers who did not testify. The handing over certificate was tendered before the court and admitted as exhibit P4. The accused person acknowledged in Exhibit P4 that the items which were handed over to PW4 were found in his possession. PW1 labelled the exhibits and listed them in the exhibit register. When the said exhibit was given to PW4, the same was indicated in the exhibit register (exhibit P1), and when it was returned from Dar es Salaam, it was filled in the exhibit Register. At Dar es Salaam, the narcotic drugs were labelled by PW10 prior to testing with Lab. No. 945/2013 and the samples were sealed. The remaining exhibit was repacked and sealed with cello tape. PW10 signed on top of the envelope and stamped on it, before giving it back to PW4.

Therefore, 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.

In the case of **Maligile Maingu versus The Republic, Criminal Appeal No. 432 of 2021**, (CAT) at page 14 it was 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."

The learned State Attorney noted two contradictions in respect of who weighed the drugs at KIA police station between PW2 and the TRA official as testified by PW3, PW5 and PW8. The second contradiction was in respect of evidence of PW2 when cross examined, he said that exhibit P2 had a tag which read the name of the accused, while PW3, PW5, PW6 and PW8 said that exhibit P2 had no tag.

Starting with the second contradiction, as already noted, during the preliminary hearing there was no dispute that the suspected bag of the accused was a hand luggage. Normally, a hand luggage is not marked with a tag. On the available evidence in this case, it is the other bag of the accused which was checked in which was said to have a tag. Hence, the noted contradiction is irrelevant to exhibit P2.

On the first contradiction, concerning the issue who weighed the drugs at KIA police station; during cross examination PW2 alleged that he was the one who weighed the two parcels of suspected narcotic drugs. I agree with the contention of Mr. Chavula that the contradiction is minor, probably caused by time taken from when the offence was committed in 2013 to 2017 when the witness testified. I support my findings with the case of **EX. G. 2434 PC. George vs Republic, Criminal Appeal No.8 of 2018, [2022] TZCA 609** at page 11 where the Court held that:

"We shall therefore bear in mind that not every contradiction and inconsistencies are fatal to the case

[Dickson Elia Nsamba Shapwata & Another v. Republic, Criminal Appeal No. 92 of 2007 (unreported)]. And that minor contradictions are a healthy indication that the witnesses did not have a rehearsed script of what to testify in court. [Onesmo Laurent @ Saiikoki v. Republic, Criminal Appeal No. 458 of 2018 (unreported)]. "Emphasis added

The last issue to be determined is whether the prosecution has proved 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 alleged that there were contradictions in respect of evidence of PW2 and PW8 in respect of presence of a tag on the suspected bag, who opened the bag between PW2 and PW3 and that there was no handing over document between PW4 and PW10. From the evidence on record, PW2 searched the suspected bag at KIA police station while PW3 witnessed the seizure of the suspected bag at the departure check point. I think the Ladies and Gentleman Assessors misdirected themselves on that issue. Otherwise, on the basis of the findings herein above in respect of the rest of discrepancies, with all due respect, I dissent from the unanimous opinions of the Ladies' and Gentleman assessors.

Finally, I am of settled opinion that the prosecution proved all the ingredients of the offence of Trafficking in Narcotic Drugs beyond reasonable doubts.

In the upshot, I convict the accused John Chibuzo 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 and delivered at Moshi this 20th day of September 2023.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

20/09/2023