

**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT MTWARA SUB REGISTRY**  
**ECONOMIC CASE NO. 8 OF 2022**

**THE REPUBLIC**

**VERSUS**

- 1. ASINA MASTANI MUSSA NGULUKURU**
- 2. MOHAMED BAKARI @ MBEPO**

**JUDGMENT**

*22<sup>nd</sup> April & 8<sup>th</sup> May, 2024*

**MPAZE, J.:**

Asina Mastani Mussa Ngulukuru and Mohamed Bakari @ Mbepo, the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively, stands charged with the offence of trafficking narcotic drugs, contrary to section 15(1)(a) and (3) (iii) of the Drug Control and Enforcement Act,[Cap 95 R.E 2019], read together with paragraph 23 of the First Schedule, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002], as amended by the Written Laws( Miscellaneous Amendment) (No.5) Act, 2021.

It was alleged that on 18<sup>th</sup> February, 2022 at Mbangala village within Masasi District in Mtwara region, the accused persons trafficked narcotic

drugs, namely cannabis sativa commonly known as '*bhangl*', weighing 210.44 kilograms. Both accused persons denied the allegations.

To establish the case against the accused persons, the prosecution who were represented by Ms. Tully Hellela, Elizabeth Muhangwa, and Jagadi Jilala, the Learned State Attorneys, called five witnesses to testify. These witnesses are Eliamin Ismail Mkenda (PW1), INSP Lusekelo Abel Mwambugu (PW2), E 2957 SGT Audfasti, Cecilia David Mrumoni (PW4), G4465 D/CPL Yegela (PW5), and E 8317 SGT Humphrey (PW6). Additionally, they tendered four Exhibits, namely Analyst Report DCEA 009 (Exhibit P1), Submission Form DCEA 001 (Exhibit P2), 13 sulphate bags suspected to contain cannabis sativa (Exhibit P3) and the Certificate of Seizure Form DCEA.003 (Exhibit P4).

In their defence, both accused persons while under the legal representation of Ms. Janeth Kivuyo for the 1<sup>st</sup> accused and Mr. Emmanuel Ngogi for the 2<sup>nd</sup> accused defended themselves on oath without calling witnesses nor did they tender any Exhibit.

The evidence presented by the prosecution is not complicated. In brief, the evidence shows that;

On 17<sup>th</sup> February, 2022 at 21:00hrs, PW2 accompanied by his fellow police officers including D/SGT Humphrey, D/CPL Paulo, D/CPL Fanuel, and D/CPL Edwin, while in the village of Lupaso, received a phone call

from an informant. The informant informed him that in Mbangala village, there was a person named Mohamed Bakari Mbepo who possessed cannabis sativa at his home.

According to PW2, the informant informed him that the said cannabis sativa is expected to be transported tonight. Upon receiving this information, PW2 instructed the driver to head to Mbangala village. Upon arrival, they met the informant who showed them Bakari Mohamed Mbepo's house. After seeing the house, they had to find the chairman of the area, whom they located and asked him to accompany them to Bakari Mohamed Mbepo's house.

Accompanied by the chairman, they arrived at the house of Mohamed Bakari Mbepo, where outside they found a bedspread but no one on the bed. They knocked on the door, and the 1<sup>st</sup> accused came out. They introduced themselves and explained the purpose of their visit, stating that they had information that there was cannabis sativa inside and they wanted to search.

PW2 stated, that the 1<sup>st</sup> accused admitted that there was cannabis sativa inside, but claimed it belonged to her husband. According to PW2, the 1<sup>st</sup> accused led them to the room where the cannabis sativa was stored.

After being shown the cannabis sativa, which amounted to 13 sulphate bags, they took them outside. They continued their search but found nothing else. PW2 said that while outside, they weighed the cannabis sativa and found it to weigh a total of 210.44 kilograms. Afterwards, he prepared a certificate of seizure, which was signed by PW2, the chairman, and Cecilia(PW4), who was a guest found inside the house along with the 1<sup>st</sup> accused.

The certificate of seizure being signed, they took the 1<sup>st</sup> accused and 13 bags found in her possession to the police station, but they also asked PW4 to accompany them because there was no female police officer in the vehicle.

PW2 added that when they arrived at the police station, a case of trafficking of narcotic drugs namely cannabis sativa was opened, which was assigned number MSS/IR/332/2022 the number which was also labelled on each bag before being handed to Exhibit Keeper for safe custody. The 13 sulphate bags were handed over to SGT Audfasti (PW3), the Exhibit Keeper, through a chain of custody form.

PW4 a guest who witnessed the search on the day of the incident testified that, on the fateful day she arrived at the 1<sup>st</sup> and 2<sup>nd</sup> accused residence seeking accommodation for the night so that she could travel to her village the next day.

She said before dawn, the police arrived and conducted the search, discovering the 13 sulphate bags containing dry leaves suspected to be cannabis sativa in one of the rooms of the house of the 1<sup>st</sup> and 2<sup>nd</sup> accused. The witness stated that when she arrived at the home of the accused persons, she found both present and that she went to sleep before them. She also added that she knew the 1<sup>st</sup> and 2<sup>nd</sup> accused as husband and wife.

PW3, the Exhibit Keeper, who was entrusted with the custody of the 13 sulphate bags, explained that upon receiving the said Exhibit from PW2, he entered it into the register book and assigned it the Exhibit register number 41/2022. He also labelled this number on each bag and continued to keep it until 4<sup>th</sup> March, 2022 when he handed it over to PW5 for sending to the Government Chemist for analysis.

On 5<sup>th</sup> March, 2022 the Exhibit was returned by PW5 who informed him that the results indicated the dry leaves in the Exhibit were cannabis sativa. He then re-assigned it a new Exhibit number, No. 47/2022, which he also labelled on each bag. This witness continued to maintain the Exhibit until he brought it to court on 18<sup>th</sup> April, 2024.

PW1 is a Government Chemist who weighed Exhibit P3 and conducted the analysis by taking samples from each sulphate bag. He stated that after he had received the Exhibit from PW5, he was able to

analyze that all 13 bags contained narcotic drugs namely cannabis sativa. PW1 elaborate on the processes which he used in analysing the Exhibit, being preliminary test and confirmatory test where both methods gave him the same results, that the dry leaves he analyzed were nothing but cannabis sativa.

PW1 also stated before he conducted the analysis, he first weighed each sulphate bag, and in total, he found a weight of 210.44 kilograms. The purpose of the analysis, as stated by PW1, was to determine whether the exhibits taken to his office were narcotic drugs. If so, identify the type of drug, its effects on human beings, and its weight.

PW1 asserted that he filled in the responses to these questions in Form No. DCEA 001 (Exhibit P2) and the results of the analysis in Form DCEA 009 (Exhibit P1).

PW5 and PW6, these witnesses, described how Exhibit P3 was obtained from PW3 to PW6, how PW5 and PW6 handed it to each other vide the Occurrence Book, and how they delivered it to the office of the Government Chemist. Later, they were informed that the Exhibit they had sent to the Government Chemist was nothing else but narcotic drugs namely cannabis sativa.

According to PW6's testimony, he successfully interviewed both the 1<sup>st</sup> and 2<sup>nd</sup> accused. The 1<sup>st</sup> accused admitted that the cannabis sativa

was found in their house but claimed it belonged to her husband, the 2<sup>nd</sup> accused. However, the 2<sup>nd</sup> accused stated that the cannabis sativa belonged to both him and his wife (the 1<sup>st</sup> accused).

All witnesses have explained that the process of handling Exhibit P3 was through signing a chain of custody(Exhibit P4) and in addition the Occurrence Book for PW3, PW5 and PW6.

Both accused denied committing the offence. The 1<sup>st</sup> accused stated that despite the police officers arrived and searched the house, they found nothing. The 1<sup>st</sup> accused also denied signing any document while they were there.

During cross-examination by the State Attorney, DW1 stated that when the police arrived, she did not see her husband and did not know where he had gone.

When cross-examined by Mr. Ngongi Advocate for the 2<sup>nd</sup> accused, she stated that when she came out, she found the sulphate bags outside the house, and the police told her they were from her house, and when examined by the court, she said she found the sulphate bags inside the vehicle.

The 2<sup>nd</sup> accused distanced himself from the offence, alleging that the house where the cannabis sativa was found belonged to the 1<sup>st</sup> accused, not him. He stated that he and the 1<sup>st</sup> accused lived separately,

about 2 acres apart. He claimed that on 17<sup>th</sup> March, 2022 he visited his lover (the 1<sup>st</sup> accused) for intimate purposes and after dinner, he returned home. He denied the presence of PW4 on that day and stated that he had never seen her anywhere except for the day she came to testify in court. He also denied having any children with the 1<sup>st</sup> accused.

In summary, this is how the evidence was given by both sides.

Before going to the merit of the case, it is pertinent to note that in criminal charges, the prosecution bears the burden of proving the accusations against the accused beyond a reasonable doubt. In the case of **Godfrey Paulo, Frank Walioba, Nelson Mbwile v. The Republic** [2018] TLR 486, the Court had this to say;

*'The burden of proof is always on the prosecution side to prove their case beyond reasonable doubt. This means that the Prosecution is duty bound to lead strong evidence as to leave no doubt to the criminal liability of the accused person.'*

In the case at hand, the prosecution's responsibility was to prove, **one**, the dry leaves contained in 13 sulphate bags (Exhibit P3) were narcotic drugs namely cannabis sativa, **Two**, the accused were found in possession of the 13 sulphate bags contained narcotic drugs and **Three** whether the chain of custody was maintained.

To establish that the substance contained in 13 sulphate bags was narcotic drugs namely *cannabis sativa*, the prosecution relied on the testimony of PW1, a Government Chemist and Analyst Report (Exhibit P1). In his testimony, PW1 explained that on 4<sup>th</sup> March, 2022 while at his office in the southern zone of Mtwara, he received PW5 along with various documents and Exhibits, including the 13 sulphate bags containing dry leaves. He described that after completing the handover procedures, he began by weighing each sulphate bag, where he obtained a total weight of 120.44 kilograms.

After that, he extracted a portion from each bag, approximately 10 grams each. He then took 2 grams from each 10-gram sample and placed it in 13 separate test tubes. In these test tubes, he conducted a preliminary test by adding a reagent called Duquenois-Levine to a mixture of ethanol and ethanol. PW1 explained that a purple colour appeared in the lower layer, indicating that the dry leaves were *cannabis sativa*.

PW1 added that after the preliminary test, he proceeded with a confirmatory test, which also yielded results consistent with those obtained in the preliminary test. Therefore, he concluded that the 13 bags he received from PW5 were indeed narcotic drugs namely *cannabis sativa*.

The results of this analysis were filled and recorded in Exhibit P1, and part of it states;

*'...Nimefanya uchunguzi wa kielezo na matokeo yake ni kama ifuatavyo;*

***KIELELEZO: MAJANI YADHANIWAYO KUWA NI DAWA ZA KULEVYA AINA YA BHANGI***

*(a) Uchunguzi wa kielezo umedhihirisha kuwa na dawa za kulevya*

*(b) Aina ya Bhangi*

*(c) Uzito wa kielelezo bila kifungashio jumla ni kilogramu 120.44*

*(d) Madhara ya bhangi*

*Bhangi ina madhara kwa mtumiaji kama vile kudhoofisha kinga ya mwili, kuharibu mfumo wa fahamu kunapopelekea mtumiaji awe mgomvi na kumfanya kuwa mtegemezi wake (Drug addiction) '*

Section 48A of the Drugs Control and Enforcement Act, Cap 95 R.E

2019 provides 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.'*

Exhibit P2 is a report signed by the Government Analyst, and it was admitted in this court without objection. Since the contents of this report have not been rebutted, it stands as conclusive evidence. Therefore,

considering the oral testimony of PW1 along with the findings documented in Exhibit P2, I have no doubt whatsoever that Exhibit P3 is a narcotic drug namely cannabis sativa.

Now, having established that Exhibit P3 is cannabis sativa, the question arises; were the accused persons found in possession of the said narcotic drug namely cannabis sativa?

In proving this the prosecution relied on the testimonies of PW2, PW4 and PW6 along with Exhibits P3 and P4.

In his testimony, PW2 stated that after receiving information from an informant that there was cannabis sativa expected to be transported from Bakari Mohamed Mbepo's house, they went to Mohamed's house accompanied by the chairman of the area (who is not a witness). After introductions, they searched and successfully found 13 bags of cannabis sativa.

PW4, who was a guest in the house, and whose presence was also acknowledged by the 1<sup>st</sup> accused in her defence, testified to witnessing the search and the subsequent finding of the 13 bags suspected to contain cannabis sativa from the house of the 1<sup>st</sup> and 2<sup>nd</sup> accused.

According to PW2 and PW4 the certificate of seizure was filled and signed by PW2, PW4, the chairman and the 1<sup>st</sup> accused. The certificate of seizure indicated that 13 sulphate bags were seized from Asina Mastani.

In her defence, the 1<sup>st</sup> accused denied signing the certificate of seizure, stating that despite the search conducted inside her house, the officers did not find any contraband. When cross-examined by Mr. Ngongi, Advocate for the 2<sup>nd</sup> accused, she said that upon exiting her house, she discovered the sulphate bags outside, and the police informed her they were from his house. However, when examined by the court, she stated she found the sulphate bags inside the vehicle.

Nevertheless, during her examination in chief, the 1<sup>st</sup> accused did not mention anything about the sulphate bags being found outside or inside the vehicle. Instead, she stated that the police came out of the house after the search with nothing and that she did not see any contraband while there.

With this inconsistency in the 1<sup>st</sup> accused's defence, where she initially claimed not to have seen anything during her examination in chief, then mentioned finding the 13 sulphate bags outside during cross-examination, and later stated she found them inside the vehicle during court examination, this confusion prompted the court to hasten its belief in the truthfulness of the accused's statements, nor does it convince the court that the accused was not found with cannabis sativa.

As previously stated, PW2 and PW4 clearly stated that after search 13 sulphate bags were recovered from the house and that the 1<sup>st</sup> accused

signed the certificate of seizure. I find these witnesses to be credible and reliable based on their testimonies.

The act of the 1<sup>st</sup> accused signing the certificate of seizure implies acknowledgement that she was found in possession of 13 sulphate bags of cannabis sativa. See the case of **Song Lei v. The DPP**, and the **DPP v. Xiao Shaodan and Two others**, Consolidated Criminal Appeal Nos. 16A of 2016 & 16 of 2017, CAT at Mbeya (unreported).

The issuance of the certificate of seizure serves the purpose of ensuring that the seized property was obtained from no person or place other than that indicated in the certificate. Therefore, since the certificate of seizure indicates that the said contraband was seized from the 1<sup>st</sup> accused, based on this evidence, this court is satisfied that the 1<sup>st</sup> accused was found in actual possession of the cannabis sativa.

Regarding the 2<sup>nd</sup> accused, whether he was found in possession of cannabis sativa or not, based on the evidence presented, there is no direct evidence showing that the 2<sup>nd</sup> accused was found in actual possession of cannabis sativa.

The evidence linking the 2<sup>nd</sup> accused to this offence is that of PW2, who stated that when the 1<sup>st</sup> accused inquired about the 13 bags of cannabis sativa, she claimed they belonged to Mohamed Bakari (the 2<sup>nd</sup> accused).

Another piece of evidence connecting the 2<sup>nd</sup> accused to the offence is that when the police arrived, the 2<sup>nd</sup> accused fled, leaving behind the 1<sup>st</sup> accused and PW4. Both the 1<sup>st</sup> accused and PW4 informed the court that when the police arrived, they did not know where the 2<sup>nd</sup> accused had gone.

Not only was the fact of the 2<sup>nd</sup> accused fleeing disclosed during the hearing but it was also admitted during the preliminary hearing, whereas the 1<sup>st</sup> accused admitted that on the fateful day, upon the arrival of the police, the 2<sup>nd</sup> accused fled. This is what the 1<sup>st</sup> accused admitted;

*'...I further admit that on 18<sup>th</sup> February, 2022 the police officer together with the village chairman came to the house and that the 2<sup>nd</sup> accused person fled leaving me behind..'*

In his defence, the 2<sup>nd</sup> accused denied involvement in the commission of this offence. He stated that on that day, he visited his partner Asina's house, had a meal, fulfilled his intimate needs, and then returned home to sleep. He also denied the presence of PW4 on that day.

Despite the 2<sup>nd</sup> accused's denial of living in the same house with the 1<sup>st</sup> accused in his defence and claimed that he was merely visiting her, it is noted in the memorandum of undisputed facts, paragraph 3, to be recorded as follows:

*'That the accused persons knew each other, as a couple(lovers) and that the first accused persons admit that*

*she used to visit and live with the 2<sup>nd</sup> accused at Mbangala Village within Masasi District in Mtwara Region.'*

According to what is stated in this undisputed fact, it is plain that the 1<sup>st</sup> accused was the one visiting her lover, the 2<sup>nd</sup> accused person. The 1<sup>st</sup> accused went further in her admission in this paragraph by stating that not only was she visiting the 2<sup>nd</sup> accused person, but she also lives with him.

In their living arrangement, according to the 1<sup>st</sup> accused in her defence, they have been blessed with four children. However, the 2<sup>nd</sup> accused, on his part, has denied having any children with the 1<sup>st</sup> accused.

From this piece of evidence as indicated above the question is, can in any way this evidence implicate the 2<sup>nd</sup> accused with this offence, while having in mind that the accused was not found in actual possession of Exhibit P3?

It is essential to note that possession can be either actual or constructive, and the prosecution must prove either form of possession beyond a reasonable doubt.

The Court of Appeal has extensively discussed the manner of establishing actual or constructive possession in various cases, including the decision in the case of **Moses Charles Deo v. Republic** [1987] T.L.R. 134. In this case, the Court categorically stated that;

*'...For a person to be found to have possession, actual or constructive of goods, it must be proved either that he was aware of their presence and that he exercised control over them, or that the goods came, albeit in his absence, at his invitation and arrangement. But it is also true that mere possession denotes knowledge and control.'*

In the case of **Salum Sady v. Republic**, Criminal Appeal No. 175 of 2022, published on [www.tanzlii.org.tz](http://www.tanzlii.org.tz), the Court of Appeal had this to say;

*'... regardless of the difficulties in proving constructive possession, the same may be established by **the evidence of acts, statement or conduct of the accused or other facts or circumstances** which tend to show that the accused was aware of the presence and character of the contraband in question and that the contraband was subject to his control.'*

Again, in the case of **Yanga Omary Yanga v. Republic**, Criminal Appeal No. 132 of 2021, published on [www.tanzlii.org.tz](http://www.tanzlii.org.tz), an excerpt from an article titled "**THAT AIN'T MINE: TAKING POSSESSION OF YOUR CONSTRUCTIVE POSSESSION CASE**," authored by H. Lee Harrel, Deputy Commonwealth's Attorney Wythe Count Virginia in Volume 6, Number 1/July 2011, was quoted. To determine the fate of the 2<sup>nd</sup> accused, I believe the following quote from the article is relevant;

*'If the Commonwealth's case is one of constructive - rather than actual - possession the following must be proved beyond reasonable doubt:*

- 1. That the defendant was aware of the presence and character of the contraband.*
- 2. That the contraband was subject to the defendant's dominion and control.*

*By its very nature constructive possession case is likely to be circumstantial, and although circumstantial evidence can be just as competent as direct evidence, it rarely packs the same punch... The first prong of constructive possession is usually the most difficult to prove. Having to prove the requisite level that the defendant knew about an item not in his actual possession is challenging. Constructive possession may be established by the evidence of acts, statements or conduct of the accused or other facts or circumstances which tend to show that the defendant was aware of both the presence and character of the substance and that it was subject to his dominion and control.'*

Guided by the authorities cited above, it is clear that even if a person is not found in actual possession, still he can be found in constructive possession if there is sufficient evidence to establish the same. This evidence may indicate that the accused knew of the presence of the illegal substance, despite it not being physically in his possession.

Moreover, it may suggest that the accused intended to control it.

Having understood how constructive possession can be established, the question arises; is there evidence implicating the 2<sup>nd</sup> accused with constructive possession

As constructive possession may be established by the evidence of acts, statements or conduct of the accused or other facts or circumstances which tend to show that the accused was aware of the presence of the illegal substance, in the present case the evidence implicating the 2<sup>nd</sup> accused with constructive possession are as follows;

Firstly, the fact that the 2<sup>nd</sup> accused fled immediately after the police arrived strongly suggests that he was aware of what was inside the house. It is not expected that someone innocent and unaware of any wrongdoing would flee from the police. Instead, he would typically stay to witness what is happening.

Secondly, in his defence, the 2<sup>nd</sup> accused claimed that the place was not his home but belonged to the 1<sup>st</sup> accused. If his defence was indeed true, why did he choose to flee when it wasn't his home? He would have had the opportunity to stay and inform the police that the house did not belong to him. Therefore, his decision to run implies consciousness of guilt and awareness of the illegal substance, contributing to the notion of constructive possession.

Thirdly, the 2<sup>nd</sup> accused completely denied, in his defence, ever living with the 1<sup>st</sup> accused and having children with her, while the 1<sup>st</sup> accused in the preliminary hearing admitted to living with the 2<sup>nd</sup> accused and in her defence stated to have four children together, the 2<sup>nd</sup> accused did not cross-examine her on this issue, failure to do so suggests an attempt to distance himself from the 1<sup>st</sup> accused regarding the commission of this offence.

This action implies that he was aware of the truth regarding the drugs. Therefore, in this court, he saw the only way to extricate himself was to deny living together with the 1<sup>st</sup> accused nor fathering children with her.

Fourthly, in his defence, the 2<sup>nd</sup> accused denied the presence of PW4 on the fateful day. However, both PW4 and the 1<sup>st</sup> accused stated that the 2<sup>nd</sup> accused was present on that day, where the 1<sup>st</sup> accused testified that the 2<sup>nd</sup> accused was the one who introduced PW4 to her as the wife of his friend.

Again, the 2<sup>nd</sup> accused did not cross-examine the 1<sup>st</sup> accused regarding this matter, and the presence of PW4 on the fateful day was not challenged during cross-examination. Therefore, the 2<sup>nd</sup> accused's denial of PW4's presence indicates an attempt to conceal the truth that implicates him and his actions of fleeing on the day of the incident.

By considering the conduct of the 2<sup>nd</sup> accused as outlined above, it is apparent that the 2<sup>nd</sup> accused was aware of the presence of cannabis sativa in the house, which is why he fled. Despite the 2<sup>nd</sup> accused claiming that the house was not his, PW2 stated that they received information from an informant that cannabis sativa was in Mohamed Bakari Mbepo's house, and the informant showed them the house.

PW2 also added that they went to the chairman and informed him that they wanted to go to Mohamed Bakari Mbepo's house, and they went with him. If indeed the said house was not the 2<sup>nd</sup> accused house, the chairman or Asina(1<sup>st</sup> accused) could have informed the police that the 2<sup>nd</sup> accused lived elsewhere and not in that house, and they could have been taken to that other house.

Not only that but during the preliminary hearing, the 1<sup>st</sup> accused admitted that she lived with the 2<sup>nd</sup> accused in Mbangala village. All these show the house in which the cannabis sativa was found belongs to both the 1<sup>st</sup> accused and 2<sup>nd</sup> accused, they both had control over the house.

In these circumstances, I am satisfied that the evidence presented has established constructive possession of Exhibit P3 against the 2<sup>nd</sup> accused person. Hence the second issue is also answered in the affirmative against the 2<sup>nd</sup> accused person.

With the first and second issues answered in the affirmative, it is imperative to ascertain whether Exhibit P3 is indeed the same item found with the accused persons. In this regard, I will delve into the chain of custody.

In the renowned case of **Paulo Maduka & 4 others v. Republic**, Criminal Appeal No. 110 of 2007, the court elucidated on the concept of chain of custody, where it stated;

*'...By "chain of custody" we have in mind the chronological documentation and/or paper trail, showing the seizure, custody, transfer, analysis and disposition of evidence, be it physical or electronic. The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed.'*

Expanding on the precedents established by the case of **Paulo Maduka & 4 others v. Republic** (*supra*), the case of **Chacha Jeremia Murimi & 3 Others v. Republic**, Criminal Appeal No. 515 of 2015 [2019] TZCA 52 published on the website [www.tanzilii.org.tz](http://www.tanzilii.org.tz), further elaborated on the concept.

*'In establishing a chain of custody, we are convinced that the most accurate method is on documentation as stated in **Paulo Maduka and Others vs. R., Criminal Appeal No. 110 of 2007** and followed in **Makoye Samwel @***

*Kashinje and Kashindye Bundala, Criminal Appeal No. 32 OF 2014 cases (both unreported). 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 every particular case.'*

After examining the decisions made in previous cases regarding the chain of custody, let me now focus on the case at hand, starting from when Exhibit P4 was seized.

According to the testimony of PW2, he stated that on 18<sup>th</sup> February, 2023 he seized 13 sulphate bags containing dry leaves suspected to be cannabis sativa. He further explained that after seizing them and leaving the scene, he took them to the police station, opened a case file, and assigned them the reference number MSS/IR/332/2022.

PW2 added that after obtaining the case number, he wrote it on each sulphate bag and handed it over to the Exhibit Keeper through a chain of custody form.

The Exhibit Keeper (PW3) testified that he received the Exhibit from PW2 on 18<sup>th</sup> February, 2022 which were 13 sulphate bags each marked MSS/IR/332/2022, and after receiving it, he placed it in the Exhibit Room, assigning it the Exhibit number 41/2022. He stated that he kept it until on

4<sup>th</sup> March, 2022, when PW6 arrived and informed him that he had come to collect the Exhibit to take it to the chemist.

PW3 stated that he handed over the Exhibit to PW6 through the chain of custody. PW6 explained that after receiving the Exhibit from PW3 he handed the same to PW5 via Occurrence Book and went together with PW5 to the office of Government Chemistry, where they handed the Exhibit to PW1 for analysis, and after the analysis was done the Exhibit was returned to PW3 on 5<sup>th</sup> March, 2022. PW6 stated that the handing over of the Exhibit to PW1 through the chain of custody.

PW1 admitted to receiving the Exhibit from PW5 and stated that after conducting the analysis, he marked the Exhibit by placing LAB number SZL/44/2022 on the seal of GCLA and his signature. After completing the analysis, he returned it to PW5 and signed the chain of custody.

PW3 acknowledged receiving the Exhibit again, and this time, after returning from the chemist. Upon re-entering the Exhibit Room, he assigned it the number 47/2022 which was marked also in each bag. This witness stated that he continued to keep this Exhibit until 18<sup>th</sup> April, 2024 when he brought it to court.

From this sequence of evidence, both documentation and oral testimony demonstrate an unbroken chain for Exhibit P3. This is further

corroborated by Exhibit P4, which is the chain of custody. All these witnesses were able to confirm that this Exhibit remained the same throughout its handling. For this reason, I find what was tendered and received as Exhibit P3 is the very item that was found on the accused persons.

Based on the discussion above, I conclude that both accused persons are guilty of an offence of trafficking narcotic drugs. Consequently, I hereby convict both of them as per section 15(1)(a) and (3) (iii) of the Drug Control and Enforcement Act,[Cap 95 R.E 2019], read together with paragraph 23 of the First Schedule, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002], as amended by the Written Laws( Miscellaneous Amendment) (No.5) Act, 2021.

It is so ordered.

**Dated** at Mtwara this 08<sup>th</sup> May 2024.

**M.B. Mpaze**

**Judge**

**Court:** Judgment delivered in open court this 8<sup>th</sup> day of May, 2024 in the presence of Ms. Elizabeth Muhangwa and Ms. Alice Nanna learned State Attorneys for the Republic, the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, Mr. Stephen

Lekey learned advocate for the 1<sup>st</sup> accused person and Mr. Emmanuel Ngongi learned advocate for the 2<sup>nd</sup> accused person.

  
**M.B. Mpaze**  
**Judge**  
**8/5/2024**

### **SENTENCE**

After considering the aggravating and mitigating factors submitted by Ms. Elizabeth State Attorney for the Republic, Mr. Lekey and Mr. Ngongi, the learned advocates for the first and second accused respectively, I have also taken into account the following in delivering this sentence;

First, I have considered the purpose of enacting the Drug Control and Enforcement Act [Cap 95 R.E 2019], which is to prevent, control, and entirely eradicate the trafficking of narcotic drugs in the country.

Second, despite the good intentions behind the establishment of this law, the prevalence of the offence remains high, indicating that many people continue to commit this crime. To deter others from committing similar offences, it is necessary to impose severe penalties.

Third, I have considered the harmful effects resulting from the use of these drugs. Users often become dependent, sometimes requiring Government resources for their care due to the detrimental impact of the drugs. Additionally, many victims are young people, leading to a loss of a productive workforce.

Furthermore, I have considered that both accused persons are first offenders, their ages, the time they have already spent in custody, and the fact that they have families dependent on them. Taking all these factors into account, I hereby sentence the 1<sup>st</sup> accused, Asina Mastani, and the 2<sup>nd</sup> accused, Bakari Mbepo, to each serve a sentence of 20 years imprisonment.



  
**M.B. Mpaze**  
**Judge**  
**8/5/2024**

**ORDER**

Exhibit P3 be confiscated and destroyed in accordance with the law.



  
**M.B. Mpaze**  
**Judge**  
**8/5/2024**

**Court:** Right of Appeal fully explained.



**M.B. Mpaze**

**Judge**

**8/5/2024**