

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
CORRUPTION AND ECONOMIC CRIME DIVISION
AT MTWARA SUB-REGISTRY
ECONOMIC CASE NO. 7 OF 2022**

**THE REPUBLIC
VERSUS
ABDALLAH SELEMANI MKAYENDA**

JUDGMENT

18th April & 08th May, 2024

MPAZE, J.:

The accused person Abdallah Selemani Mkayenda is arraigned for trafficking in narcotic drugs contrary to section 15(1)(a) and 3(iii) of the Drugs Control and Enforcement Act [CAP. 95 R.E.2019] hereinafter 'the DCEA' read together with Paragraph 23 of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [CAP. 200 R.E.2022] hereinafter 'the EOCCA'.

The information alleges that on 3rd January 2023 at Lipalwe B area within Tandahimba District in the Mtwara Region, Abdallah Selemani

Mkayenda trafficked in narcotic drugs, to wit cannabis sativa commonly known as '*bhangi*', weighing one hundred thirty-four (134) kilograms. The accused pleaded not guilty to the information hence a full trial.

During the trial, Mr. Wilbroad Nduguru, the Principal State Attorney assisted by Ms. Elizabeth Muhangwa, the State Attorney appeared for the Republic. On the other side, Mr. Stephen Lekey, the learned advocate appeared for the accused person.

To prove its case, the prosecution paraded five (5) witnesses namely Eliuthery Andrew Hhary (PW1), D/CPL Josephat (PW2), Inspector Danford Mahundi (PW3), ASP Robert Manyasi (PW4), and Said Issa Chimbala (PW5). They also tendered a total of five Exhibits, namely 10 Sulphate bags suspected to contain cannabis sativa (Exhibit P1), Analyst Report DCEA 009 (Exhibit P2), Submission Form DCEA 001 (Exhibit P3), Chain of custody Form (Exhibit P4), and Certificate of Seizure Form DCEA 003 (Exhibit P5) respectively.

In summary, the evidence presented by the prosecution witnesses revealed that on 3rd January, 2023 in the morning ASP Robert Manyasi (PW4), along with a team of police officers, were on patrol in Mkundi Ward, Lipalwe Village. While on patrol, PW4 received a call from an informant,

informing him that Abdallah Mkayenda had cannabis sativa, commonly known as '*bhangi*,' at his home.

Upon receiving this information, they met with the informant, who led them to the accused's house. They secured the accused's house and called the local leaders, the Village Executive Officer (VEO), and the Village Chairman, Said Issa Chimbala (PW5), to witness the search inside the house.

PW4 stated that he conducted an emergency search since he received the information while performing his routine duties. Both PW4 and PW5 testified that after searching the accused's house, they retrieved 10 sulphate bags containing dry leaves suspected to be cannabis sativa in the second room of the house. PW4 questioned the accused about the ownership of the bags, but the accused did not respond. Consequently, the 10 sulphate bags were removed outside.

Outside the house, the certificate of seizure was filled and signed by PW4, PW5, VEO, and the accused. The certificate of seizure was admitted as Exhibit P5.

Thereafter, the accused person and the seized 10 sulphate bags containing dry leaves (Exhibit P1) were taken to Mahuta Police Station. Upon arrival at the station, a case file numbered MHT/IR/01/2023 was opened.

Inspector Danford Mahundi (PW3) the Acting OCCID of Tandahimba police station was informed about the arrest of the accused and the seized 10 sulphate bags containing dry leaves suspected to be cannabis sativa.

While waiting for PW3 to come and pick up the accused and the Exhibit, the accused was placed in custody, and the 10 sulphate bags were stored in the storeroom. Upon PW3's arrival at Mahuta Police Station, PW4 handed over the accused and the 10 sulphate bags, which had been seized from the accused, using the chain of custody form.

Upon arriving at Tandahimba Police Station, the accused was placed in custody. PW3 labelled each of the 10 sulphate bags with the case number MHT/IR/01/2023 and stored them in the Exhibit Room, as he had the keys and the Exhibit Keeper D/CPL Josephat (PW2), was not present.

On 5th March, 2023 PW3 took the 10 sulphate bags from the store to the Government Chemist's office in the Mtwara Southern Zone for weighing and analysis. At the chemist's office, the 10 sulphate bags and other documents for submission of the Exhibit were handed to Eliuthery Andrew Hhary (PW1).

After verifying the documents, he received along with the Exhibit, PW1 signed Form DCEA 001 and the chain of custody form. He then proceeded

to weigh each bag, obtaining a total weight of 134 kilograms. After recording the weight, he took samples of dry leaves from each bag for laboratory analysis. He registered the samples with laboratory number SZO23-00001 and then returned the dry leaves to each bag. He labelled each bag with No. SZO23-0001 and sealed each bag with the GCLA label.

Upon completing the sealing process, PW1 handed the 10 sulphate bags back to PW3 on the same day, and he continued with his analysis. In his analysis, he used two methods. The first method involved using three chemicals; Duquenois-Levine reagent, concentrated hydrochloric acid, and dichloromethane. This mixture indicated that the dry leaves contained in the 10 sulphate bags originated from the cannabis plant.

In the second method, he used a microscope. Under the lens, all samples exhibited characteristic horn structures known as trichomes, which are only found in cannabis plants according to PW1. Based on this analysis, he concluded that the contents of the 10 sulphate bags were cannabis sativa, commonly known as '*bhangi*'. He recorded this finding in Form No. DCEA 009.

The 10 sulphate bags, the analysis report DCEA 009, and the Submission Form DCEA 009 10 were tendered by PW1 and admitted as Exhibit P1, P2, and P3, respectively.

After that the 10 sulphate bags were returned from the chemist's office to Tandahimba Police Station by PW3, they were handed to the Exhibit Keeper, D/CPL Josephat (PW2), using the chain of custody form (Exhibit P4). PW2 registered the 10 sulphate bags in the Exhibit Register, assigning Exhibit No. 1 of 2023, which was labelled on each bag. The bags were then stored in the Exhibit Room until the day they were brought to this court.

With the prosecution having closed its case, the accused person was found to have a *prima facie* case. He defended himself under oath without calling witnesses or tendering any Exhibits.

In summary, in his defence, the accused person denied being found with the cannabis sativa. He explained that the cannabis sativa tendered as Exhibit was retrieved in the third room of the house he had rented. According to the accused, this room belonged to the landlord, named Dadi Namnapa, who was not present at the time of the search as he was on his farm.

The accused further explained that more than one person lived in the house and mentioned one of them, named Fatuma. The accused also denied signing Exhibits P4 and P5.

In short, this is the evidence offered by both sides. After each side closed its case, it was now the court's duty to determine whether the prosecution had proved the case beyond a reasonable doubt. This determination is based on the cardinal principle of law that the burden of proof lies on the prosecution, and the standard of proof is beyond a reasonable doubt. See the case of **George Mwanyingili v. The Republic**, Criminal Appeal No. 335 of 2016 (unreported).

With the basic legal principle in mind, in the course of determining whether the prosecution managed to prove their case beyond a reasonable doubt, I will address this question by answering the following sub-questions;

1. Whether the 10 sulphate bags of dry leaves (Exhibit P1) are narcotic drugs namely cannabis sativa weighing 134 kilograms.
2. Whether the accused was found in possession of Exhibit P1.
3. Whether the chain of custody of Exhibit P1 was well maintained.

Starting with the first sub issue of whether the 10 sulphate bags containing dry leaves (Exhibit P1) were narcotic drugs known as cannabis

sativa weighing 134 kilograms. The answer to this question can be extracted from the testimony of the chemist, (PW1) who testified that after receiving the 10 sulphate bags containing the dry leaves, he conducted a laboratory analysis using two methods.

The first method involved mixing the samples with three chemicals; Duquenois-Levine reagent, concentrated hydrochloric acid, and dichloromethane. The results of this mixture formed two layers: an upper aqueous layer and a lower organic layer. The lower layer showed a purple colour, indicating the presence of tetrahydrocannabinol (THC), a chemical found only in cannabis plants, commonly known as '*bhangji*'.

PW1 further explained that the second method involved using a microscope to examine the features of the leaf samples. He took each sample, placed it on the microscope stage, and observed them through the lens. All ten samples exhibited characteristics of horn structures known as trichomes, which are typically found only in cannabis plants.

Based on these results, he concluded that the 10 sulphate bags contained dry leaves that are narcotic drugs known as cannabis sativa. These findings were recorded in Exhibit P2.

In our jurisdiction, the report of the Government analyst is final and conclusive unless rebutted. The position is well articulated under section 48A of the DCEA which 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**'.*

[Emphasis added]

The above provision of the law is well underscored by the Court of Appeal in the case of **Adam Abdallah Ramadhani v. Republic** Criminal Appeal No. 372 of 2020 [unreported] while citing the case of **Mwinyi Bin Zaid Mnyagatwa v. Republic** [1960] EA 218 (HCZ) where it was held that;

*'The prosecution in the offences related to narcotic drugs has a duty to submit expert analysis which is mandatory as **its result is final, conclusive and it provides check and balances that warrants convicting**'.* [Emphasis added]

See also the case of **Aldo Kilasi v. Republic** Criminal Appeal No. 466 of 2019 (unreported).

Back to the case at hand, there is no evidence to rebut the report of the chemist therefore it is conclusive that Exhibit P1 is a narcotic drug known

as cannabis sativa weighing 134 kilograms commonly known as '*bhangi*'. As such the first sub issue is answered in the affirmative.

Moving to the second sub issue of whether the accused was found in possession of narcotic drugs (cannabis sativa). This issue can be addressed by examining the testimonies of PW4 and PW5. Both testified that on the morning of 3rd February, 2023 a search was conducted in the accused person's house, which led to the discovery of 10 sulphate bags containing dry leaves suspected to be cannabis sativa.

PW4 explained that after the sulphate bags were found in the second room of the house, he questioned the accused about the ownership of the bags. The accused did not respond to the question. Subsequently, the sulphate bags were taken outside where the certificate of seizure was filled out. The certificate of seizure, as mentioned earlier, was signed by PW4, PW5, Juma Hamisi Mnyenje, and the accused person.

In his defence, the accused did not deny that Exhibit P1 was found in the house where he resides. What he contested was that although the 10 sulphate bags were found in the house, they did not belong to him.

He stated that the 10 sulphate bags were retrieved in the third room, which belongs to the landlord, Dadi Said Namnapa, who was not present

during the search as he was at the farm. The accused further explained that the house had three rooms, each occupied by more than one person. He mentioned a woman named Fatuma, who he claimed lived with him in the house as a tenant of Dadi Namnapa.

I have considered the accused's defence, but I noted that the same does not cast any doubt on the prosecution's evidence, for the reasons I will explain below.

As I have already mentioned earlier, the accused does not deny that the 10 sulphate bags were found in the house where he was living. However, he claims that although the bags were found in the house, they did not belong to him because they were found in his landlord's room, and he was merely a tenant therein.

During the preliminary hearing which was conducted on 20th October 2023 the accused person responded as follows;

*'My Lord, I have heard the facts. I admit my name and occupation. I further admit that I reside in Mkundi Ward within Tandahimba District. It is true on 31/01/2023, I was at Lipalwe B village within Tandahimba. **I admit that, on that day, the police officer and the village chairman, Said Seleman Chimbala came to my house and that I was informed that the police officers wanted to search my house. It is true***

that I was arrested and taken to Tandahimba Police Station. Lastly, I admit that I was charged with the offence of trafficking in narcotic drugs.

Considering what the accused admitted during the preliminary hearing, that the police went to his house and conducted a search. Although his admission in the preliminary hearing does not indicate that the 10 sulphate bags were retrieved from the said house, the evidence adduced in court by PW2, PW5 and the accused defence showed that Exhibit P1 was found in the said house. However, what the accused denies is that the sulphate bags do not belong to him while saying they belong to the owner of the house.

If what the accused stated during his defence was true, that the contraband found in the house belonged to the owner of the house then it would have been expected that when questioned by PW4 about the ownership of the 10 sulphate bags, he would have immediately mentioned the landlord.

The mention of the landlord only arose during the cross-examination of PW5 by the accused's counsel. During this cross-examination, PW5 mentioned that the owner of the house was Dadi Namnapa. However, when reexamined by the State Attorney, PW5 stated that at the time of the incident, the accused was the one living in the house.

The accused person's failure to name Dadi Namnapa as the owner of the house as early as possible during the search, or even when questioned by PW2, undermines the credibility of his defence claim that he was merely a tenant there. I find this to be an afterthought. I have come to this conclusion because even during the preliminary hearing, the accused admitted that a search was conducted in his house.

The act of the accused admitting that a search was conducted in his house indicates that he was the one living therein. This aligns with what PW2 stated in his testimony, that the only person living in the house was the accused.

The accused admitted that a search was conducted at his house, and in his defence, he acknowledged that the sulphate bags were found in the house. His later denial during his defence that the house does not belong to him does not negate the fact that he was the occupier and controller of the house at that time.

The accused also stated that more than one person lived in the house, mentioning one of them by the name of Fatuma. During cross-examination, PW5 stated that at that time, the accused was the only person living in the house, adding that others who had lived there had left a long time ago.

Although the accused claimed that more than one person lived in the house, he did not explain if these other tenants were present when PW2 and his colleagues arrived and conducted the search. If they were present, why were they not arrested, and only the accused was arrested? This lack of explanation undermines his defence, leading this court to believe that PW2 and PW5 stated that no one else was living in the house at that time except the accused.

Additionally, there is evidence that the accused signed the certificate of seizure. Although in his defence he denied signing the certificate of seizure this denial does not negate the fact that he signed it. This is because he admitted that the search was conducted in his house and that the 10 sulphate bags were recovered after the search.

Given this context, it is illogical to believe that a search was conducted, contraband was found, and yet the certificate of seizure was not filled out. Since the accused admitted the search was conducted in his presence and that the 10 sulphate bags were recovered in his presence, it is clear that he also signed the certificate of seizure as stated by PW4 and PW5. His denial of signing was an attempt to evade the offence.

In the case of **Song Lei v. The Director of the Republic Prosecutions and Others**, Consolidated Criminal Appeals No, 16 A of 2016 & 16 of 2017 [2019] TZCA 265 published on www.tanzlii.org.tz, the Court of Appeal stated;

'...having signed the certificate of seizure which is in our considered view valid, he acknowledged that the horns were actually found in his motor vehicle'

Applying this principle to the case at hand, I find the certificate of seizure valid, and I do not doubt that the accused person signed it, indicating that Exhibit P1 was found in the house which he had control over at the time the search was conducted. Hence, the second sub issue is also answered in the affirmative.

Regarding the last sub issue of whether the chain of custody was well maintained, it is settled law that in cases involving Exhibits moving from one point to another, evidence of the chain of custody is very crucial. The prosecution is required to present evidence that is sufficient to explain the handing over of the Exhibit from where it was found and seized up to the point when it is tendered in court.

The rationale behind this is to ensure the authenticity of such evidence and to establish a link or connection between the exhibit and the crime

thereby preventing the possibility of the exhibit being fabricated to incriminate the accused. See the case of **Jibril Okash Ahmed v. Republic** Criminal Appeal No. 331 of 2017 (unreported) and **Jackson Paulo & Another v. Republic**, Criminal Appeal No. 615 of 2020 (unreported)

In the landmark case of **Paul Maduka and others v Republic** Criminal Appeal No. 110 of 2007 (unreported), The Court of Appeal emphasized the proper documentation of the paper trail from the time of seizure up to the stage the Exhibit is tendered in court as evidence. However, this position has now been widened to which apart from documentation, a proper chain of custody can also be established by oral account. See, for instance, **Chukwudi Denis Okechukwu and Three Others v. Republic**, Criminal Appeal No. 507 of 2015 and **Marceline Koivogui v. Republic**, Criminal Appeal No. 469 of 2017, (Both unreported).

In the case at hand, the evidence shows that after PW4 seized Exhibit P1, he prepared a chain of custody form (Exhibit P4), which was signed by the accused person. Subsequently, Exhibit P1 was taken to Mahuta Police Station by PW4, where he handed it over to PW3. PW3 then transported Exhibit P1 to Tandahimba Police Station.

At Tandahimba Police Station, PW3 labelled each bag with the case number MHT/IR/01/2023 and stored Exhibit P1 in the Exhibit Room. On 5th March , 2023 PW3 took the Exhibit to GCLA for analysis, handing it to PW1 via Exhibit P4. After weighing and sampling each bag, PW1 sealed and labelled each bag with laboratory number SZ-2023-0001, using the GCLA seal.

Once the sealing process was completed, PW1 returned Exhibit P1 to PW3, who brought it back to Tandahimba Police Station. At this point, PW3 handed Exhibit P1 to the Exhibit Keeper(PW2) through Exhibit P4. PW2 registered Exhibit P1 into the Exhibit Register and stored it until it was tendered in court as an Exhibit.

During their oral testimonies, PW4 and PW5 identified Exhibit P3 as the one seized from the accused person's house. Conversely, the accused person did not dispute that the 10 sulphate bags tendered as Exhibit were the ones found in the house.

Apart from that all witnesses, PW1, PW2, PW3, PW4 and PW5, identified Exhibit P1 as the one passed to their hand, PW1 confirmed that it was the exhibit he analyzed, discovering that it was narcotic drugs from the cannabis plant, commonly known as '*bhangl*'.

Therefore, based on the chain of custody form coupled with the oral testimonies of the witnesses, it is clear that Exhibit P1 is the one which was seized from the accused person's house and it is the same which was tendered and admitted as Exhibit P1 in this court. Consequently, the accused's denial to sign Exhibit P4 has no legal effect. I find that the chain of custody was duly maintained.

All considerations taken into account, this Court finds that the prosecution has sufficiently proven the offence against the accused beyond a reasonable doubt. Therefore, I hereby convict the accused person of the offence of trafficking in narcotic drugs, as per section 15(1)(a) of the DCEA read together with paragraph 23 of the First Schedule, and sections 57(1) and 60(2) of the EOCCA.

It is so ordered.

Dated at Mtwara this 08th May 2024.

M.B. Mpaze

Judge

Court: Judgment delivered in open court this 8th day of May, 2024 in the presence of Ms. Elizabeth Muhangwa and Alice Nanna learned State Attorneys for the Republic, the accused person and Mr. Stephen Lekey learned advocate for the accused person.

M.B. Mpaze

Judge

08/5/2024

SENTENCE

In passing this sentence, I have considered the offence for which the accused is charged and the harmful effects of narcotic drugs to users. These effects include deteriorating users' health, making them dependent, and impairing their ability to fulfil their developmental roles both for themselves and the nation as a whole.

A significant percentage of narcotic drug users are young people, leading to a loss of productive workforce and, in some cases, forcing the nation to incur costs to mitigate further harm to these individuals.

Taking all this into account, along with the aggravating factors submitted by the state attorney and the mitigating factors presented by Mr. Lekey, I also have considered Section 60(2) of the Economic and Organized Crime Act Cap 200 R.E 2019, which provides the minimum sentence for this offence is 20 years, and the maximum is 30 years imprisonment.

Given these considerations and to serve as a deterrent not only to the accused but also to the community at large, especially those still involved in narcotic drug trafficking, I hereby sentence Ramadhani Mkayenda to serve 20 years imprisonment.



M.B. Mpaze

Judge

08/5/2024

ORDER

The 10 sulphate bags (Exhibit P1) be disposed of and destroyed per the Drug Control and Enforcement Act Cap 95 R.E 2019 and The Drugs Control and Enforcement (General) GN No. 173 of 2016.



M.B. Mpaze

Judge

8/5/2024

Court: The right of appeal has fully been explained to the parties.



M.B. Mpaze

Judge

8/5/2024