

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION

AT MOSHI

ECONOMIC CASE NO. 2 OF 2020

REPUBLIC

VERSUS

JOAO CANDIDO DE OLIVEIRA

JUDGMENT

The accused Joao Candido de Oliveira (accused) is indicted for trafficking in narcotic drugs contrary to section 15(1)(a) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by section 8 of the Drugs Control and Enforcement (Amendment) Act, No. 15 of 2017 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. 2002), as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. In the particulars of offence, Joao Candido de Oliveira is accused that on 3.10.2018 at Kilimanjaro International Airport (KIA) within Hai district in Kilimanjaro region, trafficked in narcotic drugs of cocaine hydrochloride weighing 5.81 kilograms. The accused person denied an information. Six witnesses testified on the prosecution case as summarized hereunder:

It was the prosecution story that on 3.10.2018 at 08.00 hours the accused placed his brown bag attached with a tag (exhibit PE2) on a scanner machine for inspection at the Arrival Lounge Kilimanjaro International Airport (KIA), upon reading an image of that bag, PW4 Salim Mwaliza who was a machine operator on duty, did not understand and created doubt on the image which looked like an organic. PW4 summoned his in-charge one Jeremia Sarungi PW3, who was nearby, approached at the scanner machine, upon reading that image he also created doubt as it was an organic. Meanwhile, the passenger (accused) was in front of the scanner machine awaiting his luggage (brown bag exhibit PE2) to exit the scanner. PW3 summoned the accused and asked him as to what was inside a bag, the accused responded nothing because of language barrier. PW3 directed PW4 to allow a bag to exit scanner and signaled the accused to carry his bag and put it on a table for physical inspection. PW3 phoned a call to A/Insp. Venance Mndewa PW2, who proceeded thereat, signaled the accused to surrender a passport, as at that moment it was revealed that the accused can only speak Portuguese. The accused surrendered a passport (exhibit PE5) which had boarding pass attached with a bag tag (exhibit PE1). A bag tag (exhibit PE1) corresponded particulars of a tag fastened on brown bag with a logo Lansay (exhibit PE2) and tag on a bag correspond with a name and numbers on a passport (exhibit PE5). PW2 conducted search in respect of a brown bag (exhibit PE2), where he signaled the accused to open and remove everything in a bag, where the accused removed his belonging and personal effects. PW2 peeped inside a bag saw like a ceiling board had covered something. PW2 inserted his hand, removed that ceiling board and saw a black plastic bag (exhibit

PE10), had a very small hole at the edge. On observing that hole, he saw white flour which had strong odour. PW2 recorded a certificate of seizure (exhibit PE12), which was signed by the accused the following day, to wit on 4.10.2018 after procuring an interpreter one Nickson Concalves to assist accused interprets Swahili to Portugal and vice versa. Other items seized from the accused include an itinerary/electronic ticket exhibit PE3; identity card exhibit PE4; black mobile phone make LG exhibit PE6; a wad of banknotes of USD of various denomination amounting to USD 304, Tanzania shillings notes of various denomination a sum of Tsh 50,000/= and two banknotes of Brazilian (Reais) collectively exhibit PE7. Thereafter, PW2 took the seized exhibits including a brown bag with a tag (exhibit PE2); passport (exhibit PE5); boarding pass attached with a bag tag (exhibit PE1); black plastic bag which inside had white flour (exhibit PE10); itinerary/electronic ticket exhibit PE3; identity card exhibit PE4; black mobile phone make LG exhibit PE6; a wad of banknotes of USD of various denomination amounting to USD 304, Tanzania shillings notes of various denomination a sum of Tsh 50,000/= and two notes of Brazilian (Reais) collectively exhibit PE7 and handed over to Sgt. Peter PW5 who was an exhibit keeper at KIA Police Post. On 4.10.2018 at 15.50 hours PW5 handed over black plastic bag which inside had white flour (exhibit PE10) to PW2 for the later to pack, for preparation to submit to the Chief Government Chemist. PW2 packed a black plastic bag which inside had white flour inside a khaki envelope and sealed with a sealing wax and handed over back to PW5 for custody. On 5.10.2018 at 09.00 hours PW5 handed over an envelope which had black plastic bag which inside had white flour to PW2. The handing over between PW2 and PW5 were done

through a handing over certificate exhibit PE13. PW2 submitted an envelope which had black plastic bag which inside had white flour to the Chief Government Chemist at Dar es Salaam, where he was received by Joyce Njisyia PW1. PW1 received an envelope which had black plastic bag which inside had white flour via a forensic submission form DCEA 001 exhibit PE8. PW1 registered an exhibit by Lab No. 2792/2018, opened an envelope, measured weight of white flour got 5.81 kilograms. PW1 conducted a preliminary test by using hydrochloric acid and cobalt thiocyanate where a powder changed into blue suggesting the flour being cocaine. Thereafter PW1 conducted a confirmatory test by using mixture of the powder and chemical of acetonitrile then injected into a machine called LCMMSMS, where the library installed therein read chemical components and gave her a result of cocaine as per a report Lab. No. 2792/2018 form DCEA 009 exhibit PE9. PW1 repacked, resealed and signed on top of an envelope which had black plastic bag which inside had white flour, then handed over back to PW2. PW2 took an envelope which had black plastic bag which inside had white flour including other exhibits from PW5 being a brown bag with a tag (exhibit PE2); passport (exhibit PE5); boarding pass attached with a bag tag (exhibit PE1); itinerary/electronic ticket exhibit PE3; identity card exhibit PE4; black mobile phone make LG exhibit PE6; a wad of banknotes of USD of various denomination amounting to USD 304, Tanzania shillings notes of various denomination a sum of Tsh 50,000/= and two notes of Brazilian (Reais) collectively exhibit PE7 and handed over altogether to DC Michael PW6. PW6 entered the above mentioned exhibits into exhibit register book PF16 entry No. 190/2018, then preserved them until when they were tendered in court.

The handing over between PW2 and PW6 were done through a handing over certificate exhibit PE11.

On defence, the accused (DW1) pleaded being innocent. DW1 admitted ownership of a bag but disowned narcotic drugs, on explanation that he knows nothing and have not been in possession of narcotic drugs. That when his bag was on a conveyor belt at KIA, a padlock was already opened and when he picked it, a padlock was not there. That after seeing his bag was open, he was told to pick it and pass it in a scanner machine. Thereafter he was told to put his bag on a table and directed to remove everything in a bag then he was signaled to stand aside, where other people were summoned. That PW2 directed him to surrender passport and travelling documents and put on a table. That inside his bag it was revealed that something had remained and they removed that black bag which had narcotic drugs. Thereafter they recorded a paper and repacked those things inside a bag. The following day after Brazilian Embassy had procured someone to assist him to interpret and asked DW1 to sign.

Mr. Omar Abdallah Kibwana Senior State Attorney, Mr. Ignas Mwinuka learned State Attorney and Mr. Philbert Mashurano learned State Attorney were for republic and Ms. Diana Solomon learned Advocate and Mr. Ulrick Shayo learned Advocate were defending the accused person. Both the defence and prosecution made oral closing submission which shall be referred to in the course of deliberation as the need will arise.

In this matter, as correctly alluded by the learned State Attorney in his closing submission that many issues in this trial were undisputed. At the

preliminary hearing, the accused had admitted his personal particulars including a name Joao Candido de Oliveira. The accused also admitted a fact that on 3.10.2018 at 08.00 hours he arrived at Kilimanjaro International Airport (KIA) from Brazil via Dubai by Ms Fly Dubai flight No. F2673. The accused admitted to have been in possession of Brazilian passport No. 790620. The accused further admitted to have been in possession of a brown bag written Lansay attached with a tag No. 011208 bearing a name Joao Candido de Oliveira. The accused admitted to have been arrested for an offence of trafficking in narcotic drugs. The accused admitted for the following items to be received as exhibit and were accordingly marked as follows: a boarding pass attached with a bag tag exhibit PE1; a brown bag written Lansay attached with its tag exhibit PE2; itinerary/electronic ticket number GHVEIG exhibit PE3; identity card exhibit PE4; a travelling passport No. FW 790620 exhibit PE5; a mobile phone make LG (black) exhibit PE6; cash money being USD notes of various denomination amounting to USD304, Tanzania shillings bank notes of various denomination a sum of Tsh 50,000, Brazilian notes (Reais) collectively exhibit PE7.

At defence the accused admitted that after he was signaled to remove everything inside his bag it was revealed that something had remained and they removed that black bag which had narcotic drugs. Up to this moment it can be said that actually all facts have been admitted, there is nothing to adjudicate. May be for the sake of an argument asserted by the accused on his defence that he found a padlock of his bag missing and his bag was loose or ajar while at a conveyor belt. But the accused did not exhibit a key for the alleged tempered padlock, neither stated if at all some of his belonging or

personal effects were lost or stolen. I say so, as according to a story of PW2, PW3 and PW4 a large portion of accused bag was occupied by a piece of ceiling board where a black plastic bag (weighing 6.1 kilograms, measured with its packing materials), was kept.

More important, an answer to this issue is found in the accused defence. During cross examination, DW1 who is aged 62 anos, ice vendor, living in a coconut palm leaves cottage at Sao Paulo Brazil , stated under oath, I quote a relevant version,

'...at Brazil I had sat aside a ground, appeared people who requested me to carry a bag to Kilimanjaro and promised to pay me USD 7,000/= which is equal to Brazilian Rear 42,000, which in Brazil you can purchase even a house, but I decided to go back to my wife first to inform her that there are people who had asked me to carry a bag to Kilimanjaro, but my wife was crying saying even if I had problems I should not go to Kilimanjaro. But because I saw USD 7,000 is a lot of money and due to condition of a house I was living I decided to transport that bag'.

As such an issue of possible planting that black plastic bag, for what was alleged by the accused that a padlock for his bag was tempered and went missing, cannot be entertained. Literary such an argument is far-fetched from what actually transpired on the ground. As it can be grasped from the accused's rue, DW1 was given that bag by anonymous to convey it to Kilimanjaro on lucrative pay. It is unfortunate a rice burn gets into sand, as

the accused was apprehended upon landing his footprint on the soil of Kilimanjaro. As such he cannot be heard lamenting on possible planting of a foreign object in a bag entrusted to him by someone else.

There was an argument by the defence Counsel that a seizure certificate made under section 48(2)(c) of the Drugs Control and Enforcement Act, No. 5 of 2015 offend the law, for failure by PW2 to issue a receipt in respect of items seized. It is true that section 48(2) (c) (vii) of Act No. 5 of 2015 as amended, requires a receipt to be issued against items seized. However, under the Third Schedule, the only available form for seizure, under the provision of section 48(2) (c) is a certificate of seizure, a Form DCEA 003. As such an argument by defence Counsel melt away.

It suffices to say that the evidence presented by prosecution witnesses number two, three and four is water tight that a black plastic bag containing powder exhibit PE10 which was confirmed to be cocaine by PW1 via exhibit PE9, was impounded inside a brown bag exhibit PE2 belonging to the accused, when he was attempting to import from Brazil via Dubai.

Having premised as above, I rule that the prosecution has managed to prove the charge levelled against the accused.

The accused is convicted for trafficking in narcotic drugs contrary to section 15(1)(a) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by section 8 of the Drugs Control and Enforcement (Amendment) Act No. 15 of 2017 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. 2002), as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.



E.B. Luvanda
Judge
10/7/2020

SENTENCE

The accused is sentenced to thirty years (30) imprisonment.

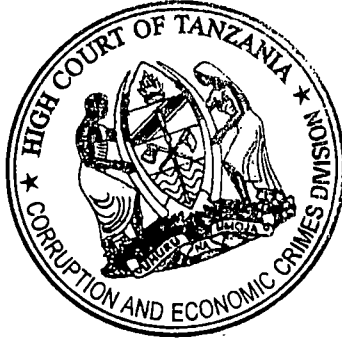


E. B. Luvanda
Judge
10/07/2020

ORDER

1. An envelope containing a black plastic bag which had powder, cocaine inside exhibit PE 10 to be destroyed in terms of regulation 14 of GN No. 173/2016, as ordered on 08/7/2020
2. A brown bag (Lansay exhibit P2) which was proved by prosecution to be an instrumentality for carrying a black plastic bag with powder exhibit PE10, is confiscated.
3. A passport exhibit PE5; identify card exhibit PE4, a mobile phone LG exhibit PE6, cash money USD 305, Tshs. 50,000/= and two Brazilian notes, including clothes and sports shoes inside a brown bag exhibit PE2, all be handed over back to the accused.

Court: Right of appeal against conviction, sentence and order is there.



E. B. Luvanda

Judge

10/07/2020