

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT DAR ES SALAAM**

**ECONOMIC CASE NO. 12 OF 2019**

**REPUBLIC**

**VERSUS**

**MUSSA RAMADHAN MAGAE**

**JUDGMENT**

27<sup>th</sup> August & 29<sup>th</sup> October, 2021

**BANZI, J.:**

The accused person, Mussa Ramadhan Magae stands charged with three counts namely, trafficking in narcotic drugs, possession of small quantity of narcotic drugs and possession of utensils intended for preparation of narcotic drugs contrary to sections 15 (1) (b), 17 (1) (b) and 16 of the Drug Control and Enforcement Act, No. 5 of 2015 ("the Drug Act") respectively, read together with paragraph 23 of the First Schedule to the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002] ("the EOCCA") as amended.

It is alleged in the first count that, on 14<sup>th</sup> September, 2017 at Mlandizi area, within Kibaha District in Coast Region, the accused person trafficked in narcotic drug namely Heroin Hydrochloride weighing 200.94 grams. In the second count it is alleged that, on 14<sup>th</sup> September, 2017 at Mlandizi area within Kibaha District in Coast Region, the accused person was found in possession of narcotic drugs namely Cannabis Sativa weighing 2.88 grams. It is also alleged in the third count that, on 14<sup>th</sup> September, 2017 at Mlandizi area within Kibaha District in Coast Region, the accused person was found in possession of three pieces of tiles intended to be used in preparation of narcotic drugs. The accused person pleaded not guilty to all three counts.

At the trial, Ms. Cecilia Mkonongo, learned Senior State Attorney, assisted my Ms. Batilda Mushi and Mr. Edith Mauya, learned State Attorneys represented the Republic, while Mr. Wilson Magoti, learned Advocate, represented the accused person.

In a bid to prove their case, the prosecution side paraded seven witnesses and produced twenty-one exhibits. On 22<sup>nd</sup> July, 2021, I took over the case from Hon. Mashaka, Judge (as she then was) and continued with trial under section 299 (1) of the Criminal Procedure Act [Cap. 20 R.E.

2019] ("the CPA") following her appointment as the Justice of Appeal to the Court of Appeal of Tanzania.

In the main, the prosecution evidence presents a case that, on 14<sup>th</sup> September, 2017, Assistant Inspector Wamba (PW5), an officer at the Drug Control and Enforcement Authority (DCEA) received an instruction from his superior that, at Mlandizi Njia Panda ya JKT area, there is a person namely Mussa Ramadhan Magae who involves in trafficking of narcotic drugs. Upon that instruction, he prepared a team, including Christina Paulo Katiba (PW4), D/C Witness and D/C Imran. At about 6:00 pm, PW5 was informed that, the suspect is at his house packing narcotic drugs. Following such information, PW5 with his colleagues went to the crime scene. They arrived around 8:00 pm. On arrival, PW5 instructed PW4 and D/C Imran to look for a local leader, who would act as independent witness to an intended search. The two managed to get two local leaders, Enzi Maisha Mayanga and Sophia Hussein Hamza (PW7).

After returning, PW5 informed the local leaders about their intended search in the house of the accused person. Thereafter, PW5 knocked the door which was opened by the accused person. PW5 introduced himself with his team to him and informed him their mission. According to PW5, he asked

the accused person if he knows the independent witnesses whereby, the accused person replied that, he knows them as "wajumbe" of the area he resides. Before entering the house, the officers inspected themselves in the presence of the accused person and independent witnesses. After that, PW5, PW4, D/C Witness, D/C Imran, Enzi Maisha Mayanga, PW7 together with the accused person entered in the house and the search began.

The search was conducted by PW4 under the supervision of PW5. They began at the sitting room where they found a platter like "ungo", containing nylon packet with a length like a finger knotted on one side containing powder substance suspected to be narcotic drugs. (Powder substance and its package were admitted as Exhibit P15A and P15B), cash money Tshs.221,600/=, nylon packets 'vifungashio', a lighted candle, razor blades and a weighing scale silver and black in colour (Weighing scale was admitted as Exhibit P19). PW4 handed over these items to PW5.

Thereafter, the search proceeded to the bedroom where on the top of the drawer to the bed, they found a white bag containing a khaki envelope. Inside the khaki envelope, there was a black bag with two transparent packets containing a powder substance suspected to be narcotic drugs. (Powder substance in two transparent packets were admitted as Exhibits

P12A<sub>1</sub> and P12B<sub>1</sub>, while the packages were admitted as P12A, P12B, P12C, P12D and P12E). In the wardrobe, PW4 retrieved a transparent nylon packet with a knot on one side containing powder substance suspected to be a narcotic drug. (Powder substance and its package were admitted as Exhibit P14A and P14B respectively). In the same wardrobe, PW4 found another transparent nylon packet containing five packets. Each packet contained powder substance suspected to be a narcotic drug. The packets were tied into five knots. (Powder substance within five packets were admitted as Exhibits P18<sub>1B</sub>, P18<sub>2B</sub>, P18<sub>3B</sub>, P18<sub>4B</sub> and P18<sub>5B</sub> while the transparent packet was admitted as Exhibit P18<sub>6</sub> and five packages were admitted as Exhibits P18<sub>1A</sub>, P18<sub>2A</sub>, P18<sub>3A</sub>, P18<sub>4A</sub> and P18<sub>5A</sub>). All these items were handed over to PW5.

Also, in the same wardrobe, PW4 retrieved another transparent nylon packet containing powder substance suspected to be narcotic drugs. (Powder substance and nylon package were admitted as Exhibit P13B and P13A respectively). Within the same wardrobe, PW4 retrieved five pellets in transparent nylon packets tied together like a long belt containing powder substance suspected to be narcotic drugs. (Powder substance within the pellets were admitted as Exhibits P16A<sub>1</sub>, P16B<sub>1</sub>, P16C<sub>1</sub>, P16D<sub>1</sub> and P16E<sub>1</sub> while

the transparent packages were admitted as Exhibits P16<sub>A2</sub>, P16<sub>B2</sub>, P16<sub>C2</sub>, P16<sub>D2</sub> and P16<sub>E2</sub>). On the side of the wardrobe, PW4 found six pellets containing dried leaves suspected to be narcotic drugs. Five pellets were wrapped in a piece newspaper and one pellet in a khaki paper. (Dried leaves within the six pellets were admitted as Exhibits P17<sub>A1</sub>, P17<sub>B1</sub>, P17<sub>C1</sub>, P17<sub>D1</sub>, P17<sub>E1</sub> and P17<sub>F1</sub> while the packages were admitted as Exhibits P17<sub>A2</sub>, P17<sub>B2</sub>, P17<sub>C2</sub>, P17<sub>D2</sub>, P17<sub>E2</sub> and P17<sub>F2</sub>). On the floor of the same bedroom, PW4 retrieved four pieces of tiles which were burnt on the other side suspected to contain remnants of narcotic drugs. (Four pieces of tiles were admitted as Exhibits P20<sub>1</sub>, P20<sub>2</sub>, P20<sub>3</sub> and P20<sub>4</sub>). PW4 handed over all these items to PW5.

After completing search exercise, PW5 seized all exhibits by filling in the certificate of seizure (Exhibit P21) which was signed by PW5 himself, independent witnesses (PW7 and Enzi Maisha Mayanga) and the accused person. After completing everything, they took accused person and went back to DCEA offices in Dar es Salaam. According to PW5, throughout the journey, the seized exhibits were under his control and custody. On arrival, he kept all exhibits in his cabinet and locked it because the custodian of exhibits, SSP Neema Andrew Mwakagenda (PW3) was not in the office at

that particular moment. On 15<sup>th</sup> September, 2017 around 4:00 pm, PW5 handed over seized exhibits to PW3. Upon receiving, she labelled white bag containing khaki envelope with black bag with two transparent packets containing powder substance (Exhibit P12 collectively) as E1; transparent nylon packet containing powder substance (Exhibit P13 collectively) as E2; transparent nylon packet containing powder substance (Exhibit P14 collectively) as E3; nylon packet with a knot on one side with powder substance (Exhibit P15 collectively) as E4; five pellets in transparent nylon packets tied together like a long belt containing powder substance (Exhibit P16 collectively) as E5; six pellets of dried leaves (Exhibit P17 collectively) as E6; five transparent packets with powder substance (Exhibit P18 collectively) as E7; weighing scale (Exhibit P19) as E8 and four pieces of tiles (Exhibit P20 collectively) as E9(a), E9(b), E9(c) and E9(d). She also labelled them with case file number DCEA/IR/14/2017.

On the same date, 15<sup>th</sup> September, 2017 around 5:00 pm, PW3 took the exhibits with label E1, E2, E3, E4, E5, E6, E7, E8 and E9(a) to E9(d) for packing. The packing was witnessed by PW5, Lazaro Raphael Mhegele (PW6), independent witness John Jacob Muhone (PW2), and the accused person. She took exhibits E1, E2, E3, E4, E5, E6, E7 and E8 and packed the

same in envelopes which she labelled E1, E2, E3, E4, E5, E6, E7 and E8 respectively. She also put each tile into envelope and labelled E9(a), E9(b), E9(c) and E9(d). Then she put four envelopes into one envelope which she labelled E9. Further, she labelled each envelope with case file number DCEA/IR/14/2017. She sealed each envelope with a seal with word "Evidence". She wrote her name and date on the seal. The accused person and independent witness, PW2 wrote their names and signed on each envelope. Upon completing, she stored those exhibits in the exhibits room until 18<sup>th</sup> September, 2017 when she handed them over to PW6 so that he could submit them to the Government Chemist Laboratory Authority (GCLA) for analysis.

After receiving, PW6 went to GCLA and upon arrival, he handed the exhibits over to a government chemist, Faustine John Wanjala (PW1) via Form DCEA 001 (Exhibit P2). According to PW1, he received twelve exhibits with label E1, E2, E3, E4, E5, E6, E7, E8, E9(a), E9(b), E9(c) and E9(d). Then he registered them by the Laboratory Number 2590/2017. He weighed the powder substance and dry leaves separately from their package. According to him, the powder substance in E1, E2, E3, E4, E5 and E7 weighed 177.38 grams, 10.48 grams, 5.40 grams, 1.14 grams, 0.27 grams and 6.27 grams



respectively, while dry leaves in E6 weighed 2.88 grams. After weighing, he conducted preliminary tests. He conducted Mecke test in E1, E2, E3, E4, E5 and E7 whereby, all tested positive for narcotic drugs namely heroin. E6 revealed that, it was narcotic drug namely cannabis sativa. Also, Mecke test in E9(b), E9(c) and E9(d) revealed the pieces of tiles had remnants of narcotic drugs namely heroin while E8 and E9(a) did not have any remains of narcotic drugs.

After preliminary tests, PW1 drew samples from each exhibit for a confirmatory test. Thereafter, he repacked the exhibits, sealed the envelopes, signed and handed them over to PW6, who upon returning to the office, he handed it over to PW3. PW3 stored them in the exhibits room until when they were brought and tendered in this Court. Later on, PW1 proceeded to conduct confirmatory tests over the samples he drew. He used a machine called Liquid Chromatography Mass Spectrometry Mass Spectrum (LC-MS/MS). According to him, during the analysis, he used international reference standard to confirm the result. After the analysis, samples from E1, E2, E3, E4, 45, E7, E9(b), E9(c) and E9(d) were confirmed as narcotic drugs, namely heroin hydrochloride, while sample in E6 was confirmed to be tetrahydrocannabinol which is only found in cannabis sativa. Exhibits E8 and

E9(a) did not show any remains of narcotic drugs. After getting the results, on 28<sup>th</sup> September, 2017, he prepared a report which was approved by the Chief Government Chemist. The certified report was admitted as Exhibit P1 after the original one got lost while under the custody of the DCEA.

In his defence, the accused person categorically refuted to have committed the alleged offences. He claimed to live at Tanita area and denied to have ever lived at Mlandizi area in the house where the alleged narcotic drugs were found. Further, he claimed to be arrested on 10<sup>th</sup> September, 2017 at Tanita area. According to his testimony, on 10<sup>th</sup> September, 2017 around evening hours, he was at the football ground of Tanita Primary School watching a football match. Then, one man approached him and informed him that, he wants to talk to him. After greeting each other, that man informed him that, he came with his colleagues whom he left at the bus stand. He went with him to the bus stand and on arrival, he found other three men. The one who took him from the ground introduced himself as police officer and so as his colleagues. They further informed him that, he is required at Kibaha Police Station over theft incident occurred at Tamco parking yard.

Thereafter, they took him to Kibaha Police Station and on arrival, he handed over his two mobile phones make TECNO Y2 and Samsung together with cash money, Tshs.221,600/=. After that, he was put in a lock up where he slept until 11<sup>th</sup> September, 2017 when he recorded his statement concerning the alleged theft incident. He stayed at Kibaha Police Station until on 2<sup>nd</sup> October 2017 when he was taken before the Resident Magistrates' Court at Kibaha. He was charged with three counts concerning narcotic drugs. The accused person denied to have never been at DCEA offices, neither to have witnessed the packing of exhibits alleged to be conducted by PW3. He further denied to have signed the certificate of seizure, Exhibit P21 and the signature appeared therein is not his. He added that, his local leader is called Mzee Mwalimu and not PW7. He maintained his innocence and prayed to be acquitted.

In the main, that was the evidence of the prosecution and defence sides. The prosecution side filed their final written submission timely as per order of this Court. However, the defence side did not comply with the order. I will consider the submission by the prosecution in the course of this judgment.

Having carefully considered the evidence on record and the submission by the prosecution side, the main issue before the Court for determination is whether the prosecution side has proved the case against the accused person beyond reasonable doubt. However, the determination of this issue rests on other two specific issues, namely, **one**, *whether Exhibits P12, P13, P14, P15, P16, P17, P18 and 20 collectively, were retrieved from the accused person's house* and **two**, *whether the chain of custody was maintained*.

Starting with the first issue, the prosecution evidence shows that on the night of 14<sup>th</sup> September, 2017 the search was conducted in the house where the accused person is residing. This is established by the evidence of PW4, PW5 and PW7 as well as Exhibit P21. According to PW4, at the sitting room, she found nylon packet with a length of a finger knotted on one side containing powder substance (Exhibits P15A and P15B); cash money Tshs.221,600/=; nylon packets 'vifungashio'; lighted candle; razor blades and weighing scale silver and black in colour (Exhibit P19). In the bedroom, on the top of the drawer to the bed, she found white bag containing a khaki envelope. Inside the khaki envelope, there was a black bag with two transparent packets containing powder substance suspected to be narcotic drugs. (P12A, P12A<sub>1</sub>, P12B, P12B<sub>1</sub>, P12C, P12D and P12E). In the wardrobe,

PW4 found transparent nylon packet with a knot on one side containing powder substance (Exhibit P14A and P14B); transparent nylon packet containing five packets, the packets were tied into five knots containing powder substance (Exhibits P18<sub>1A</sub>, P18<sub>1B</sub>, P18<sub>2A</sub>, P18<sub>2B</sub>, P18<sub>3A</sub>, P18<sub>3B</sub>, P18<sub>4A</sub>, P18<sub>4B</sub>, P18<sub>5A</sub>, P18<sub>5B</sub> and Exhibit P18<sub>6</sub>); another transparent nylon packet containing powder substance (Exhibits P13A and P13B); five pellets in transparent nylon packets tied together like a long belt containing powder substance (Exhibits P16<sub>A1</sub>, P16<sub>A2</sub>, P16<sub>B1</sub>, P16<sub>B2</sub>, P16<sub>C1</sub>, P16<sub>C2</sub>, P16<sub>D1</sub>, P16<sub>D2</sub>, P16<sub>E1</sub> and P16<sub>E2</sub>) and six pellets containing dried leaves, five pellets were wrapped in a piece newspaper and one pellet in khaki paper. (Exhibits P17<sub>A1</sub>, P17<sub>A2</sub>, P17<sub>B1</sub>, P17<sub>B2</sub>, P17<sub>C1</sub>, P17<sub>C2</sub>, P17<sub>D1</sub>, P17<sub>D2</sub>, P17<sub>E1</sub>, P17<sub>E2</sub>, P17<sub>F1</sub> and P17<sub>F2</sub>). Also, on the floor of the same bedroom, PW4 retrieved four pieces of tiles which were burnt on the other side suspected to contain remnants of narcotic drugs (Exhibits P20<sub>1</sub>, P20<sub>2</sub>, P20<sub>3</sub> and P20<sub>4</sub>).

All these exhibits were seized through the certificate of seizure (Exhibit P21) which was filled by PW5 and signed by him together with the accused person and PW7. The evidence of PW4 is supported by the evidence of PW5 and independent witness, PW7 who also saw those items retrieved from the house of the accused person. Besides, before this Court, PW4, PW5 and PW7

successfully identified Exhibits P12, P13, P14, P15, P16, P17, P18 and 20 collectively, as the ones which were found and seized in the house of the accused person.

On the other hand, the accused person claimed to be arrested on 10<sup>th</sup> September, 2017 at the football ground of Tanita Primary School while he was watching football match. He also denied to have ever lived at Mlandizi area in the house alleged to be found with narcotic drugs. Looking closely at his defence, the accused person has attempted to introduce and rely on the defence of *alibi* because he claimed not to be at the crime scene on the time of the incident. However, his defence of *alibi* flawed the procedure stipulated under section 42 (1) (2) of the EOCCA which reads as follows;

*"(1) Where a **person charged** with an economic offence **intends to rely upon an alibi** in his defence, **he shall first indicate to the Court the particulars of the alibi at the preliminary hearing.***

*(2) Where an accused person does not raise the defence of alibi at the preliminary hearing, **he shall furnish the prosecution with the particulars of the alibi he intends to rely upon as a defence at any time before the case for the prosecution is closed.***" (Emphasis supplied).

It is apparent from the extract above that, the accused person ought to have notified the Court his intention to rely on *alibi* as his defence during the preliminary hearing. But he did not do so. If his *alibi* was genuine, it was expected to be revealed from the beginning at the preliminary hearing considering the fact that, his counsel was present during plea taking and preliminary hearing. If he was not at the crime scene, he could have told his counsel from the beginning who is conversant with the procedure of notifying the Court to that effect. Apart from that, according to the extract above, the accused person also failed to furnish the prosecution with the particulars of his *alibi* before the closure of prosecution case as required by subsection (2) above. The record shows that, the prosecution side took almost one year and few weeks before they closed their case because the first witness began to testify on 16<sup>th</sup> July, 2020 and the case was closed on 3<sup>rd</sup> August, 2021. If his *alibi* was genuine, he could at least reveal his particulars to the prosecution within such period of one year before the closure of prosecution case.

Moreover, if his *alibi* was genuine, it was expected to be revealed in the course of testimony of PW4, PW5 and PW7. But the questions pertaining his *alibi* were not asked by his counsel when the searching officer (PW4),

seizing officer (PW5) and independent witness (PW7) were testifying. In other words, the accused person through his counsel did not cross-examine PW4, PW5 and PW7 in this aspect which ordinarily connotes acceptance of the truth of the witness' evidence. See the case of **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010 CAT (unreported). This alone is a clear indication that, his so-called *alibi* is nothing but an afterthought.

Furthermore, in his defence, the accused person denied to sign in the certificate of seizure Exhibit P21. Nonetheless, PW4, PW5 and PW7 in their testimony clearly explained that the accused person signed the certificate of seizure in their presence. If at all, he did not sign in Exhibit P21, it was expected to be revealed in the course of testimony of PW4, PW5 and PW7. But, the accused person through his counsel did not cross-examine PW4, PW5 and PW7 on this aspect which ordinarily implies acceptance of the truth of the witness' evidence. This is a clear indication that, the accused person signed Exhibit P21 to acknowledge the seizure of exhibits found in the house. See the case of **Song Lei v. The Director of Public Prosecutions and Others** (Consolidated Criminal Appeals No. 16 A of 2016 & 16 of 2017) [2019] TZCA 265 at [www.tanzlii.org](http://www.tanzlii.org) where it was insisted that upon signing



the certificate of seizure, the accused person acknowledges to be found with the exhibit in question.

Apart from that, the accused person in his defence denied to be the owner or to have ever lived in the house from which the search was conducted. Although PW7 was cross-examined on that aspect, but PW7 was persisted that, she knows the accused person and he inherited that house. The accused person during cross-examination admitted to have no grudges with any of the prosecution witnesses. If he admitted to have had no grudges with them including PW7, I don't see anything that may cause PW7 or other prosecution witnesses to frame up the accused person. If he was really arrested by persons other than PW5 and his colleagues, how did he end up in the hands of officers of the DCEA? Besides, if the accused person was never been at the DCEA offices as he claimed, then how his signatures ended up in the envelopes (Exhibits P3 to P11) that were used to pack the exhibits? Worse enough, the accused person did not cross-examine PW2 (the independent witness to packing exercise), PW3 and PW5 on that aspect of him signing in Exhibits P3 to P11. On this, I am constrained to agree with the submission by learned State Attorney that, the accused person's failure to cross-examine those witness on that aspect, was an outright acceptance

of truthfulness. See the case of **Deus Josias Kilala @ Deo v. Republic** (Criminal Appeal No. 191 of 2018) [2020] TZCA 1809 at [www.tanzlii.org](http://www.tanzlii.org). Therefore, taking these all together, it is the considered view of this Court that, the accused person's defence in general and his *alibi* in particular is an nothing but an afterthought. Thus, I accord no weight to his defence and I completely reject it.

Thus, in the light of the position of the law and considering the evidence on record, it is clear that the certificate of seizure, Exhibits P21 is valid, and it supports the evidence of PW4, PW5 and PW7 to prove that, on 14<sup>th</sup> September, 2017 at Mlandizi, Njia Panda ya JKT area, the search was conducted in the house of the accused person where Exhibits P12, P13, P14, P15, P16, P17, P18 and 20 collectively, were found therein. Hence, the first specific issue is answered in affirmative.

Before determining the second issue, according to the evidence of PW1, there is no doubt that Exhibits P12, P13, P14, P15, P16 and P18 collectively, are narcotic drugs namely, heroin hydrochloride. Also, three pieces of tiles (Exhibit P20<sub>2</sub>, P20<sub>3</sub> and P20<sub>4</sub>) had the remnants of narcotic drugs, heroin hydrochloride. Likewise, Exhibit P17 collectively, is narcotic drug namely, cannabis sativa. PW1 arrived at the said conclusion after

conducting two tests on each exhibit. According to him, after preliminary tests, exhibits E1, E2, E3, E4, E5, E7 and E9 (Exhibits, P12, P13, P14, P15, P16 and P18 collectively) revealed they were narcotic drugs, heroin, while exhibit E9(b), E9(c) and E9(d) (Exhibits P20<sub>2</sub>, P20<sub>3</sub> and P20<sub>4</sub>) revealed that, three pieces of tiles had remnants of heroin and exhibit E6 (Exhibit P17 collectively) was cannabis sativa. PW1 further stated that, after preliminary tests, he drew samples from each exhibit and conducted confirmatory test by using the machine called Liquid Chromatography Mass Spectrometry Mass Spectrum (LC-MS/MS). According to him, during the analysis, he used international reference standard to confirm the result. After the analysis, samples from E1, E2, E3, E4, 45, E7, E9(b), E9(c) and E9(d) were confirmed as narcotic drugs, namely heroin hydrochloride, while sample in E6 was confirmed to contain tetrahydrocannabinol which is only found in cannabis sativa. PW1's evidence is supported by analysis report, Exhibit P1 which was prepared by him. According to section 48A (2) of the Drug Act, in the absence of any evidence to the contrary, Exhibits P1 is a conclusive proof that the remnants in Exhibits P20(b), P20(c) and P20(d) as well as the substances in Exhibits P12, P13, P14, P15, P16, P17 and P18 collectively are

narcotic drugs in the ambit of section 2 and the First Schedule to the Drug Act.

Reverting to the second specific issue, the evidence on record shows that, the arrest of the accused person and the seizure of the drugs in question was made on 14<sup>th</sup> September, 2017 by the team of the DCEA officers, among them was PW4 and PW5, in the presence of independent witness, PW7. The exhibits were seized through the certificate of seizure, Exhibit P21. Upon seizure, the exhibits in question remained in the custody and control of PW5 throughout the journey until when he handed them over to exhibits keeper, PW3 on 15<sup>th</sup> September, 2017 around 4:00 pm. Upon receiving, she labelled them and around 5:00 pm, she packed the exhibits in the presence of PW2, PW5, PW6 and the accused person. After that, she stored the exhibits in exhibits room until 18<sup>th</sup> September, 2018 when she handed over to PW6 so that he could sent them to the Government Chemist. PW6 upon receiving the exhibits from PW3, he went to GCLA and handed them over to PW1 through Exhibit P2. After preliminary analysis, PW1 repacked the exhibits and handed over to PW6 who on the same day, handed over to PW3. Then PW3 took back to the exhibits room and stored the same until they were brought and tendered before this Court.

PW4, PW5 and PW7 identified Exhibits P12, P13, P14, P15, P16, P17, P18 and P20 collectively before this Court as the same one they saw and seized from the crime scene. Likewise, PW3 identified those Exhibits before this Court as the ones she received from PW5 and packed. Apart from that, PW2 and PW6 successfully identified before this Court those Exhibits as the ones, they witnessed during packing exercise conducted by PW3. Finally, PW1 also identified those Exhibits as the same one he received from PW6 and analysed. Although there is no any other document showing handing over apart from Exhibits P2 and P21, but as correctly submitted by learned State Attorney that, documentary evidence and oral evidence have the same status in proving any fact. Thus, as it was stated in the case of **Abas Kondo Gede v. Republic** (Criminal Appeal No. 472 of 2017) [2020] TZCA 391 at [www.tanzlii.org](http://www.tanzlii.org) that, the authenticity of exhibits and its handling will not fail the test merely because there was no documentation. Oral evidence can be taken to be credible in establishing chain of custody concerning handling of exhibits. See also the cases of **Charo Said Kimilu and Another v. Republic**, Criminal Appeal No. 111 of 2015 CAT (unreported); **Chukwudi Denis Okechukwu and Three Others v. Republic** (Criminal Appeal No. 507 of 2015) [2018] TZCA 255 at [www.tanzlii.org](http://www.tanzlii.org) and **Marceline Koivogui**

**v. Republic** (Criminal Appeal No. 469 of 2017) [2020] TZCA 252 at [www.tanzlii.org](http://www.tanzlii.org). These cases involved narcotic drugs namely, cannabis sativa, cocaine hydrochloride and heroin hydrochloride.

Basing on this evidence, a complaint by the accused person about PW3's failure to show her signature in the envelopes, Exhibits P3 to P11 before the Court does not hold water because, during cross-examination and re-examination, PW3 clearly explained about that fact. According to her, she wrote her name and date on the 'Evidence' seal on each envelope. PW3 further stated that, she cannot show her name and date because they are covered by another seal. Therefore, from the evidence of PW1, PW2, PW3, PW4, PW5, PW6 and PW7 together with Exhibits P2 and P21, it is the finding of this Court that, the exhibits that were seized, they are the very one which were examined by the Government Chemist and tendered in evidence in this court. Thus, the second specific issue is also answered positively.

Since both specific issues were affirmatively answered, definitely, the main issue would be positively answered. However, it can be recalled that, the accused person is charged with three offences; trafficking in narcotic drugs, possession of small quantity of narcotic drugs and possession of utensils Intended for preparation of narcotic drugs. These offences were

committed before the amendment of the Drug Act, 2017. In respect of the first count, the heroin hydrochloride in question was found at the sitting room, on top of the drawer to the bed and inside the wardrobe. This means, the accused person stored narcotic drugs in those places. This act amounts to trafficking as per definition of the trafficking under section 2 of the Drug Act before the amendment. Concerning the second count, there is no doubt that the act of retrieving cannabis sativa inside the wardrobe amount to possession of narcotic drugs. In respect of the third count, the prosecution alleges that, the accused person was found in possession of three pieces of tiles intended to be used in preparation of narcotic drugs. However, although three pieces of tiles were found with the remnants of narcotic drugs but the prosecution evidence is wanting about the connection between those pieces of tiles and preparation of narcotic drugs. PW4 and PW5 apart from stating about retrieving those pieces of tiles, they did not adduce any evidence to explain and establish how the same were intended to be used for preparation of narcotic drugs which could have proved the third count.

Having said so and from the foregoing reasons, it is the finding of this Court that, the prosecution side has failed to prove the case beyond reasonable doubt against the accused person in respect of the third count.

Thus, I find him not guilty and he is accordingly acquitted of the offence possession of utensils intended for preparation of narcotic drugs.

So far as the first and second counts are concerned, it is the finding of this Court that, the prosecution side has managed to prove the case against the accused person beyond reasonable doubt. Besides, there is no evidence from him to prove trafficking and possession were lawful as he was required under section 28 (1) of the Drug Act. Therefore, I find the accused person, Mussa Ramadhan Magae guilty and I hereby convict him with the offences of trafficking in narcotic drugs and possession of small quantity of narcotic drugs contrary to sections 15 (1) (b) and 17 (1) (b) of the Drug Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002] as amended.

It is so ordered.



**I. K. BANZI**  
**JUDGE**  
**29/10/2021**



Delivered in open court in the presence of Ms. Cecilia Mkonongo, learned Senior State Attorney, Ms. Edith Mauya learned State Attorney, Ms. Editruda Mrema, learned Advocate and the accused person.



**I. K. BANZI**  
**JUDGE**  
**29/10/2021**

### **SENTENCE**

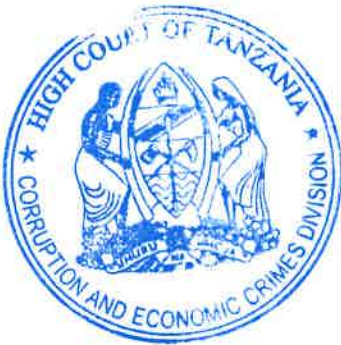
I have considered the submission of learned Senior State Attorney. I have also considered the mitigation by the accused person. The accused person is the first offender and considering the spirit of sentencing which is reformation, and since he is convicted with economic offence, I hereby sentence him to thirty (30) year imprisonment for first count and for second court to pay fine of Tshs 500,000/= or three years imprisonment in default. The sentence shall run concurrently.



**I. K. BANZI**  
**JUDGE**  
**29/10/2021**

## ORDER

Exhibits P3 to P20 collectively are hereby confiscated to the Government of the United Republic of Tanzania and the same be destroyed under the Drug Control and Enforcement Act [Cap 95 R. E. 2019] with its Regulations, GN No. 173 of 2016.



A handwritten signature in blue ink, consisting of a large, stylized 'B' followed by a series of loops and a final flourish.

**I. K. BANZI**  
**JUDGE**  
**29/10/2021**

### Court:

Right of appeal against conviction, sentence and order is fully explained.



A handwritten signature in blue ink, consisting of a large, stylized 'B' followed by a series of loops and a final flourish.

**I. K. BANZI**  
**JUDGE**  
**29/10/2021**