

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM
ECONOMIC CASE NO. 1 OF 2020

REPUBLIC
VERSUS

- 1. ABUBAKARI IBRAHIM HUSSEIN KILONGO**
- 2. ALEX ALLEN MEMBA**

JUDGMENT

The accused persons Abubakari Ibrahim Hussein Kilongo (first accused) and Alex Alen Memba (second accused) are jointly 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 and paragraph 23 of the First Schedule to the Economic and Organized Crime Control Act (Cap. 200 R.E. 2002) as amended.

In the particulars of offence, Abubakari Ibrahim Hussein Kilongo and Alex Alen Memba are accused that on 15/11/2018 at Mapinga area within Bagamoyo District in Coast region, jointly and together trafficked in narcotic drugs of cannabis sativa commonly known as bhang weighing 327.56 kilograms in the motor vehicle with

registration number T819 CYQ make Prado. The accused persons denied an information.

Ms. Mwahija Ahmed learned Senior State Attorney and Ms. Clara Chawe learned State Attorney was acting for republic, Mr. Majura Magafu learned Advocate and Mr. Nehemiah Nkoko learned Counsel was defending the accused persons. Only the prosecution filed closing submission which shall be referred to in the course of deliberation in the due course as the need will arise.

Essentially the evidence presented by prosecution was a direct evidence. To start with expert evidence, the chemist Gabriel J. Gabriel (PW1) stated that he conducted analysis in respect of samples he collected from 327.56 kilograms of leaves contained in seventeen sacks of sulphate bags (exhibit P2) and confirmed that it was cannabis sativa (commonly bhang) as per the report form DCEA 009 exhibit P1. Basically there was no question which was raised by the defence side to discredit this scientific findings and conclusion (expert opinion) by the chemist (PW1). A mere fact that those sacks (seventeen bags, exhibit P2 collectively) where PW1 took sample for analysis, had some dry leaves like elongated grasses, (which PW1 said were used as packing materials), on itself cannot be taken as a serious concern, as no scientific proof that it affected the analysis by PW1. I say so because PW1 was keen that

what he analyzed were leaves which were confirmed to be cannabis sativa. PW1 denied to have conducted analysis in respect of other grasses which were used as packing materials to cover bhang. Equally an argument that some sacks are holed, or else that some leaves poured and scattered in a car (exhibit P5), are all immaterial, as did not affect the analysis and conclusion by PW1.

Number two, chain of custody. According to PW1, he received from Sgt James (PW4) the seventeen sacks of cannabis sativa (exhibit P2) via a submission form DCEA 001 exhibit P6, where after a preliminary test, PW1 sealed them and handed over back to PW4. PW4 explained to have received exhibit P2 from D.Cpl Yohana Amos Mashamba (PW3) and after PW1 had handed over to him (PW4), the later handed over back to PW3 on the same date, to wit on 28/11/2018. The handing over between PW3 and PW4 were done through exhibit register exhibit P3. PW3 who is the exhibit keeper, stated to have received exhibit P2 including a motor vehicle T819CYQ and its switch exhibit P5 on 15/11/2018 from ASP Joseph Hilinti Jingu (PW5 an arresting and seizing officer). It suffices to say the chain of custody was properly established by the prosecution. There is no clue suggesting that at any time chain of custody in respect of exhibit P2 collectively was broken.

Number three, arrest and seizer. The evidence of PW5 was to the effect that he seized the seventeen sacks of cannabis sativa exhibit P2 in a motor vehicle exhibit P5, where Alex Allen (second accused) was a driver and Abubakari Kilongo (first accused) was a passenger, at the scene of incident at Mingoi road Mapinga Bagamoyo. The seizure was done via certificate of seizure exhibit P7. It was the evidence of PW5 that, they nabbed the two accused person after were blocked and surrounded by motor cycle riders. Therefore, a defence by the accused person that they went to Mapinga to look for plots, is unfounded. This is because there was ample evidence implicating them to have been caught red-handed in control of a car exhibit P5 which had loaded those seventeen sacks of cannabis sativa exhibit P2. The evasive denial by the accused persons that they were not arrested in possession of exhibit P2, cannot assist them to distance from the liability. As I have said above, the evidence presented by the prosecution is direct and water tight. My finding is cemented by the evidence of Thadeo Matogoro Julius PW6, a soldier who pursued and chased the accused's car exhibit P5 untired from Picha ya Ndege Kibaha, where PW6's Toyota Wish was knocked by accused's car, up to the final destination at the scene where the accused's car was ultimately intercepted, blocked and enclosed by a crowd of

motorcycle riders. Equally Hamad Abdallah Ally PW2 motorcycle rider at Mapinga and Cpl Mramba PW7 explained on how the duo accused were apprehended and found in possession of seventeen sacks of cannabis sativa exhibit P2.

In view of that, the accused's defence that they were on the way to Mapinga to look for plot, as I have said above, is unrealistic and unbelievable, as they did not mention a specific destination or location. Neither stated as to who was their host there. As reflected in the testimony of PW2, PW5 and PW7 mentioned various destinations at Mapinga, including Tungutungu, Kiharaka, Mingoi, Kwa Kipingu. But the duo accused were unable to depict even a single specific destination or spot. This suggest that, the accused persons lost their way, after knocking PW6's car and while trying to escape PW6, only to be entrapped and snared by police officers as aforesaid.

More important, DW1 conceded to have been chasing each other with a car make Toyota Wish. He also admitted to had got a breakdown, including seeing many motorcycle riders (commonly *bodaboda*), which by and large support and carryforward prosecution case. Similarly, a narration by DW2 that their car got breakdown and switched off where motorcycle riders followed them and a fact that they alighted after police had arrived, it brings

him closer to the scene and destination where they were apprehended after being blocked by motorcycle riders. A defence by the first accused that he signed a seizure certificate (exhibit P7) by force, is an afterthought. An explanation by the second accused that he did not sign exhibit P7, is a mere defence. This is because a question of torture (beating) or use of force during signing exhibit P7, as alleged by DW1 and none signing of exhibit P7 as contemplated by DW2, these facts were not tested to PW5 who tendered exhibit P7. Admittedly, the argument of torture and none signing was raised by the defence Counsel when objecting a certificate of seizure to be admitted. It is elementary knowledge that, torture and none signing are matters of facts, it was therefore expected for them to be tested to PW5 during cross-examination. In the circumstances, that sort of defence cannot be entertained.

Regarding an argument that a seizure certificate exhibit P7 was not recorded at the scene of incident rather at Mapinga Police Post. It is true that after the accused persons were arrested at the scene of incident at Mingoi road Mapinga Bagamoyo, search and seizure was not done there, rather it was done at Mapinga Police Station. However, PW5 explained that they failed to conduct search and record a seizure certificate at the scene of incident because of crowd of motorcycle riders (*bodaboda*). To me that constitute

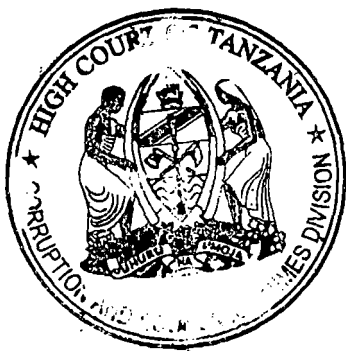
sufficient reason, as according to PW2 explained that there were over a hundred motorcycle riders who assembled at the scene of incident. Meaning that the place was unsecured. Therefore, PW5 was justified to move from the scene and conduct search at Mapinga Police Station.

There were some discrepancies on the prosecution evidence, for stance PW2 contradicted himself, at first stated that after a motor vehicle make Prado was arrested, they proceeded to Mapinga Police Station where counting of seventeen sulphate bags was done. But during re-examination, PW2 stated that after a car make Prado was arrested, he left and proceeded to the village at Mapinga. On cross-examination, PW2 stated that he cannot recall if he went to Mapinga. Nevertheless, the same were miniature and tiny, in a way that could not affect the above central story that the two accused were arrested red-handed in possession of seventeen sacks of cannabis sativa (exhibit P2) loaded in a car exhibit P5.

That said, I find that the prosecution has managed to prove an information levelled to the first and second accused.

Therefore, the first and second accused are found guilty and are convicted for the offence of trafficking in narcotic drugs contrary to section 15(1)(a) of the Drugs Control and Enforcement Act, No. 5

of 2015 as amended and paragraph 23 of the First Schedule to the Economic and Organized Crime Control Act (Cap. 200 R.E. 2002) as amended.



E. B. Luvanda
JUDGE
16/4/2021

Date: 16/04/2021

Coram: E.B. Luvanda, Judge

For Republic: Ms. Clara Chawe, SA

For Defence: Mr. Hosea Chamba, Advocate on brief for Mr. Majaru

Magafu, Advocate

1st Accused: Present

2nd Accused: Present

B/C: F. Suphiani

Court: Judgement delivered at open court.

Court: Invited the Prosecutor to address on previous conviction records.

Ms. Chawe, SA: We have no previous records, but looking on the seriousness of the offence, we ask for the court to impose sentence according to the law. That is all.

Court: Invited the defence counsel to address on mitigation.

Mr. Hosea Chamba, Advocate: We ask for court leniency because they are first offender, they are still young, the national and their parents depend on them. Both have children who depend on them. The first accused have a kid aged 4 years, equally the second accused. They have wives. We ask for a

leniency sentence, as, they stayed in custody for 3 years, we believe have learn and they regret (remorseful) for the offence committed. That is all.

SENTENCE

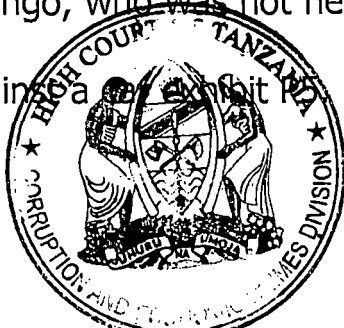
In view of the mitigation and remorse by the accused, I sentence each accused person to serve a term of 30 years imprisonment.



E.B. Luvanda
Judge
16/04/2021

Orders

- i. The 17 sacks of cannabis sativa exhibit P2 to be destroyed (burnt)
- ii. Motor vehicle T819 CYQ (exhibit P5) to be dealt with under the relevant rules, if the prosecution wish, as according to a motor vehicle licence exhibit P4 reveal it is owned by one Ibrahim Ghumpi Kilongo, who was not heard in this matter. I therefore make no order against a person exhibit P4



E.B. Luvanda
Judge
16/04/2021

Court: Right of appeal against conviction, sentence and orders in there



E.B. Luvanda
Judge
16/04/2021