

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

ECONOMIC CASE NO. 21 OF 2021

THE REPUBLIC

Versus

- 1. BAKARI RAMADHANI**
- 2. EUSTICE HELBERT @ ZUNGUFYA**

JUDGMENT

21/06/2022 & 24/06/2022

E.B. LUVANDA, J.

The accused persons Bakari Ramadhani (first accused) and Eustice Helbert @ Zungufya (second accused) are indicted for trafficking in narcotic drugs contrary to section 15(1)(a) and (3)(1)(iii) of the Drugs Control and Enforcement Act Cap 95 R.E. 2019 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. 2019.

In the particulars of offence, it is alleged that on 24/06/2020 at Visiga within Kibaha district in Coast region, the accused persons trafficked in narcotic

drugs namely cannabis sativa commonly known as bhanghi weighing 86.36 kilograms. The accused persons denied the information.

The question for determination is whether the prosecution have proved their case on the standard.

It was the story of the prosecution, in particular Cpl Mussa (PW5) that on 24/6/2020 at 04.30 while on road patrol (inspection of motor vehicles) at Visiga, he stopped a car T202DSN IST brand silver (exhibit P6) driven by the first accused who was on military uniform and the second accused seated on a passenger seat. PW5 put that upon illuminating inside using a torch, inside the said car he saw sulphate bags on a rear seat for passengers. He inquired the first accused as to what is it, he said it was cannabis sativa. He then summoned the in-charge of patrol Cpl Mwasiti who proceeded thereat and summoned all police officers to witness. Thereafter PW5 recorded a search warrant or seizure exhibit P5 which was under emergence search, which was signed by PC Richard, Cpl Mwasiti, DC Deus. However, this story differs at large with other prosecution witnesses who were at the scene along with PW5.

For one thing, while PW5 said he summoned the in-charge (PW2) to visit at a spot where he stopped a car exhibit P6, PW2 said PW5 crossed the road

to the other side where PW2 was located, where PW5 asked PW2 to go the other side where exhibit P6 had parked. Two, while PW5 said upon PW2 arrival at exhibit P6, the later summoned all police officers to go there to witness, but PW2 said upon arrival thereat, she saw already all police officers had assembled thereat exhibit P6. This also contradict with a story of Cpl Deus (PW6) who stated that PW5 after stopping a car exhibit P6, PW5 summoned at once PW2, PW6 and PC Richard. Three, PW5 said he conducted search at Visiga via exhibit P5 where PW2 also signed therein, but PW2 said no search was done at Visiga and even her name and signature is missing in exhibit P5. Four, PW5 was silence as to a fact that he conducted search at whose directive or whether he did it at his own accord. Taking into account that PW2 was the in charge on command there. According to PW2 upon being satisfied that a cargo of six sacks loaded in exhibit P6 was suspected to be cannabis sativa and because the driver (first accused) was a soldier, she took initiative to inform the OCD, the later directed her to take the driver and cargo to the police station at Mlandizi. It was a story of PW2 that on arriving there, PW2 handed over the exhibits and accused to Cpl Majani through occurrence book and the detention register, respectively. The story of PW6 portray a different story, that PW2 directed them in

particular PW5 to conduct search in respect of exhibit P6, meanwhile PW2 was busy inspecting other cars on the opposite side of the road. According to PW6 a certificate of seizure was witnessed by PC Richard and PW6.

Another point of departure, PW6 stated that from Visiga to Mlandizi Police Station exhibit P6 was driven by PC Richard, while PW5 said a car exhibit P6 was driven by Juen who was summoned by PW2. PW2 disowned seeing Cpl Juen at Visiga or at Mlandizi police, neither enroute from Visiga to Mlandizi Police Station

Now, assuming that a search was conducted by PW5 at Visiga, is still entangled with impediment, because PW5 failed even to mention the number of sulphate bags or sacks which were seized from exhibit P6. On cross examination, PW5 said categorically that nowhere he explained that they counted sulphate bags at Visiga. On further cross-examination, PW5 failed to explained even on how those sulphate bags were loaded in exhibit P6, failed to recall and explain as to how many sacks were loaded on the middle seat for passengers and how many were loaded into a boot (rear). However on cross examination, PW2 said when she was being summoned by PW6, the later told her a car had loaded six sulphate bags, where PW6 alleged to have seen four sacks in a boot and two in passenger middle seat. This seems

to be funny, as PW6 said at the time he summoned his colleague, he only saw sulphate bags at the middle seat through a torch light.

To my view, these contradictions are serious one which cannot be easily ignored. This is because the discrepancies depicted above distort the whole exercise of arrest, search and seizure, meaning that there is no credible witness upon which to trust or rely upon to tell as to what exactly transpired at the scene (Visiga). Every witness present there, was coming up with her or his own different story, to the extent of suggesting that they were not at the same place during occurrence of this incident. I understand a rule that all witness at the scene cannot be speaking exactly on the same facts. Essentially there is no rule that every witness should recite all facts adduced by another witness to the letter or exactly and precisely word to word.

In **Dickson Anyosisye vs The Republic**, Criminal Appeal No. 155 of 2017, Court of Appeal of Tanzania sitting at Mbeya (unreported), at pages 12 to 13, the Court had this to say, I quote,

'Admittedly, the two witnesses; PW6 and PW7, did not narrate the story as elegantly as other witnesses did. However, this was not surprising. Due to the frailty of

*human memory witnesses are not expected to retell stories in the same manner. There certainly will be some minute discrepancies on details here and there. As we held in **Athumani James** (supra) in which we relied on our previous decision in **John Gilikola v Republic**, Criminal Appeal No. 31 of 1999 (unreported) to observe that:*

"...due to the frailty of human memory and if the discrepancies are on details, the Court may overlook such discrepancies"

However, the situation herein discrepancies and contradictions are marred on some facts and major events like search and seizure which surely cannot be expected for every witness to have his or her own different story too far apart from the other or rest witnesses.

That said, the prosecution failed to prove beyond reasonable doubt the information against the two accused persons.

Appreciation to Mr. Clemence Kato learned State Attorney for the republic and Mr. Tumaini Mgonja learned Advocate who was representing the accused persons, including filing closing submissions.

Therefore the information for the offence of trafficking in narcotic drugs contrary to section 15(1)(a) and (3)(1)(iii) of Cap 95 R.E. 2019 (supra)

read together with paragraph 23 of the First Schedule to, and sections 57(1) and 60(2) of Cap 200 R.E. 2019 (supra), is dismissed and the accused persons are acquitted.

E.B. Luvanda
Judge
24.06.2022

