

**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**

**AT SHINYANGA-SUBREGISTRY**

**ECONOMIC CASE NO. 4 OF 2021**

**THE REPUBLIC**

*Versus*

**ABDULAZIZI YUSUPH**

**JUDGMENT**

**29/06/2022 & 04/07/2022**

**E.B. LUVANDA, J.**

The accused Abdulazizi Yusuph is indicted for trafficking in narcotic drugs contrary to section 15(1)(a) of the Drugs 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 Organized Crime Control Act, Cap 200 R.E. 2002.

In the particulars of offence, it is alleged that on 17/05/2018 at Nyamalapa area within Itilima district in Simiyu region, the accused person trafficked in narcotic drugs namely khat commonly known as *mirungi* weighing 54 kilograms from Lugulu to Nyamalapa by using a motor cycle with registration

number MC 670 BLQ FEKON brand. The accused person denied the information.

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

The facts and narration by the arresting officer (DC Zabron, PW5) and seizing officer (Insp. Owen Ng'ambi, PW1) suggest two different theories regarding events culminating arrest of the accused person. The theory by PW1 is that on the material date 17/5/2018 at 09.00 hours he (PW1) was on patrol using a car along the main road Bariadi Maswa, escorted by D/Cpl Ahmed, DC Mfaume, PC Raymond, PC Boniface while DC Zabron (PW5) and PC Masanja were riding motorcycles. According to PW1 while at Lugulu Itilima, a motorcycle carrying two large parcels passed them on high speed, thus suspected it. PW1 directed PW5 and his colleague rider PC Masanja to pursue that motorcycle, meanwhile PW1 was trailing it slowly on the rear. When PW1 arrived at Nyamalapa Village, saw already PW1 arrested the suspect who was riding a motorcycle carried two sacks. PW1 stated that, on seeing that he summoned one person who introduced as Erikana, thereby conducted search and seized two sacks containing fifty bundles of leaves of khat exhibit P3, a motor cycle MC 670 BLQ, Fekon brand, red colour exhibit

P2, via a seizure certificate exhibit P1. On cross examination, PW1 stated that they did not have prior information regarding commission of offence, rather were on routine patrol to combat lawlessness. In other words, PW1 was importing scenario of emergency search.

The second theory by PW5, start with facts dispelled by PW1. It was a story of PW5 that on the material date at about 07.00 he received information from his informant that there is a motor cycle on transit from Nyakabindi Village to Mwanza via Lugulu, Maswa and Misungwi. PW5 picked his colleague rider DC Masanja Kiabo, proceeded to the main road Bariadi Maswa, parked and made a trap at Lugulu Center, it is when a motorcycle carrying two sacks passed on high speed. PW5 pursued it from Lugulu up to Nyamalapa Village, where because of slippery road, the accused toppled and fell down where a motorcycle and a cargo of two sacks overlaid him on the top, hence nabbed by PW5. PW5 stated that, people assembled thereat, and he managed to identify one Erikana Lamecki whom was familiar, handcuffed the accused, and then phoned call to his in-charge who was on patrol Insp. Owen (PW1). According to PW5, when he was dialing call to PW1, the later was at Lugulu. On cross examination, PW5 said when a motorcycle was passing at Lugulu, only two police officers were there. PW5 went on to say,

the accused was arrested at Lugulu near a store and not at the Center. According to PW5 when they were chasing a motorcycle, PW1 was not aware.

In view of the above, my conclusion is that either of the two witnesses, one is blatantly lying. This is because their stories are two ocean apart. In actual fact, the credibility of PW1 and PW5 is highly at stake. It is elementary that evidence found to be incredible, cannot be acted upon. As much every one staged his own different version of story, the effects it render the testimony of PW1 and PW5 unworthy of belief and therefore unreliable.

The only thing in common by PW1 and PW5 is that the accused was arrested at Nyamalapa Village, in possession of exhibit P2 and P3.

The statement of Erikana Lameck exhibit P5, a signature purported to have been appended by the alleged Erikana Lameck is totally different compared to a signature of the same Erikana Lameck appearing in a certificate of seizure exhibit P1. In exhibit P5 a signature is written by his first name, while in exhibit P1 is written in a distinctive way or form (calligraphy font style). This suggest something is wrong or fishy in between. To be precisely, exhibit P1 and P5 are equally unreliable.

Regarding a caution statement of the accused exhibit P6, I reserved the argument on the objection on point of law of whether it was recorded out of time or not. The learned defence Counsel said it was recorded after expiry of four hours, arguing that it offended section 50 of the Criminal Procedure Act, Cap 20 R.E. 2019. The learned Prosecuting Officer conceded to a fact that it was out of time, but took a refugee exemption in the case of **Yusuph Masalu @ Jiduvi and Three Others vs Republic**, Criminal Appeal No. 163 of 2017 Court of Appeal, page 16, arguing that the act of recording out of time was justifiable because PW2 stated that they were moving from one area to another to arrest another suspect companion of the accused. The learned Prosecuting Officer made a point of correction that the exhibit P6 was out of time in terms of section 48(2)(v) of the Drugs Control and Enforcement Act, Cap 95, which prescribe twenty four hours.

It is true that for narcotic drugs related offences, the time for recording the caution statement is twenty four hours counting from when the suspect was put under restrain. It is true also that in **Yusuph Masalu** (supra) the Apex Court had ruled that the time when the suspect move from one destination to another, is exempted for purpose of computation of available time for interview. However the scenario herein is somehow peculiar, in a sense that

after arrest the accused was taken rightaway to the police station, where it is alleged some oral interview was done and the accused semaphore confessing to the offence and mentioned a person to whom he intended to deliver exhibit P3. Thereby the recording officer D/Cpl Boniface (PW2) postponed interrogation exercise in lieu of, caused the accused to phone call to one Hashim Bashiru Litembo (alleged accused's companion) informing him that he was under police arrest, then commenced a journey to Mwanza to look after him. They stayed there from 17/05/2018 up to 20/05/2018 when they give up and asked assistance of cyber people to locate and apprehend the alleged Litembo. It was a story of PW2 that upon arrival at Simiyu on 20/05/2018 at 14.00 hours and commenced interview at 15.20 hours. Surprisingly a version of story that after arrest the accused communicated with the alleged Litembo on phone, is missing in exhibit P6. Equally a story that the accused had travelled to Mwanza and remained there for a couple of days looking for Litembo and thereafter made a retreat to Simiyu, is missing in exhibit P6. This made the accused to dispel a fact that he phoned call Litembo or travelled to Mwanza in pursuit of the so called Litembo.

In the circumstances, a fact that the delay was due to movement to arrest the alleged Litembo after being informed that the accused was under police

restrain with a cargo of khat, is highly suspect. Actually it defy logic and common sense to say the alleged Litembo could stay at the same location and await an appointment of someone who is under police restrain, knowingly he will be caught like a prey. That said the exception in **Yusuph Masalu** (supra) is not available herein, where PW2 was acting contrary to the expected norms of spying to apprehend suspect.

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

Appreciation to Mr. Masambu learned State Attorney for the republic and Mr. Martine Sabini learned Advocate who was representing the accused person.

Therefore the information for the offence of trafficking in narcotic drugs contrary to section 15(1)(a) of Act No. 5/2015 (supra) read together with paragraph 23 of the First Schedule to, and sections 57(1) and 60(2) of Cap 200 R.E. 2002 (supra), is dismissed and the accused person is acquitted.



E.B. Luvanda  
Judge  
4.07.2022