

**IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION
AT SHINYANGA SUB-REGISTRY
ECONOMIC CASE NO 1 OF 2021**

**THE REPUBLIC
VERSUS
FRANK CLIFFORD**

JUDGMENT

27/06/2022 & 1/07/2022

E.B. Luvanda, J

Frank Clifford stand charged for illicit trafficking in narcotic drugs contrary to section 15(1)(a) 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 Organised Crimes Control Act, Cap 200 R.E. 2019.

In the particulars of offence, it is alleged that on 18/09/2020 at Nyaumata Area within Bariadi District in Simiyu region the accused was unlawfully conveyancing narcotic drugs to wit khat commonly *mirungi* weighing 61.300 kilograms from Old Maswa to Shinyanga by using a motorcycle registration number MC 254 CCG Sanlg brand. The accused pleaded not guilty to the information.

The issue for determination, is whether the information was proved on the standard.

According to the prosecution witness number two D/Sgt Uledi, the accused was arrested at the verge of escaping the cops who had created doubt on cargo loaded on the carrier of a motor cycle SanLG brand, red colour registration MC 254 CCG exhibit P2, which the accused was riding. Upon seeing the police officers trailing him and were about to block his way, the accused made a sharp U-turn towards Lamadi road (headed back). It was a story of PW2 that they went in pursuit of the accused, who attempted to negotiate aside (off road) only to stick on the valley, hence nabbed. PW2 stated that upon search on the cargo loaded on exhibit P2, it was revealed to be fresh leaves of khat. This testimony was corroborated nearly by prosecution witness number one D/Cpl Sweke.

At defence, the accused DW1 staged a defence of love stories and quarrel between him and PW2. But this fact was dispelled by PW2 when he was cross-examined by the defence Counsel. Indeed the accused did not detail particulars of the alleged lover/paramour purported to have orchestrated a quarrel between them. DW1 neither mentioned the name of a lady, nor her whereabouts was disclosed at his defence. In the context, a general complaint

that PW2 had promised to teach him (DW1) a lesson, coupled by the alleged threats, cannot be said that had managed to shadow any doubt to the testimony of PW2 which was supported by PW1, as aforesaid. Importantly, the accused did not say as to why PW1 also implicated him. A mere assertion that he (PW1) was acting under instructions of PW2, is untenable. Failure to explain as to when, where and to whom they were quarrelling, render his defence wishy-washy. Also the alleged report to police against threats by PW2 was not particularised, as to when and where lodged. The purported IR 28/2019 does not depict any police station. The alleged RB was not tendered. As such, the accused was merely alleging generalised assertion without proof whatsoever. I understand that that the duty of accused is light only to shadow doubts on the prosecution case or evidence. But such kind of defence where the accused is trying to touch here and there without any focus, surely cannot be taken seriously to have shade a shadow of doubt on prosecution evidence.

Suffices to say, the prosecution evidence was cogent and watertight against the accused.

Another defence by DW1 that he was coming from disco also was too general. DW1 did not plead a specific disco hall or lounge or club or even a location. On cross examination, DW1 ended saying many people attended the alleged

disco, but failed to mention even a single person who attended that show. This support the prosecution story that at the scene where the accused was arrested at Nyaumata, there is no human settlement or residence, no human activities or people gathering, as put by PW1 on re-examination. Essentially, PW1 dispelled allegations by the accused that he was arrested while from disco. That said a complaint by the accused that there was no independent witness to a search, automatically succumb for reasons stated by PW1, also PW2 added that it was during night time (23.00 hours), and there was no passer-by thereat.

There were some discrepancies, example in the inventory of seized exhibit for disposal (exhibit P5) the learned resident magistrate (PW7) only signed but it did not record any remarks and stamped a normal rubber stamp, instead of a court seal. However, this was not fatal, as PW7 issued a certificate of destruction exhibit P6, which depict that khat weighing 61.300 kilograms were disposed (set on fire) at the District Court of Bariadi. Importantly, Ayubu Tobi Mlekwa (PW5) who is the watchman at Bariadi District Court, confirmed to have disposed those fresh leaves of khat, by setting on fire using matchbox, grasses and branches of trees at the waste pit within the district court precinct.

Also the chemist Sane Mayaya Lyochi (PW8) in her report of analysis form DECEA 009 exhibit P7, indicated to have received samples from Nzega instead of Bariadi. Exhibit P7 bears police case number BAR/IR/1816/2020 and depicts name of submitting officer with force number G.1722 PC Paul. The said G.1722 PC Paul appeared in court and testified as A/Insp. Mahoho (PW6). PW6 testified under oath to have submitted sample to the chemist and handed over to PW8. As such, I rule that the said Nzega is a mere typographical error on a printed text that is exhibit P7. Therefore, it is not fatal.

There was another query that a khaki envelope of sample was not sealed with a sealing wax. According to rule 20(5) of The Drugs Control and Enforcement (General) Regulations, G.N. No. 173 of 2016, which is all about storage of sample drawn, provide, I quote,

'The envelope shall be sealed and marked top secret to be sent to the recognized government forensic laboratory'

The requirement of the law is for sample drawn and packed in the envelope to be sealed. The rule does not mention sealing wax. PW8 said the khaki envelope was sealed by a glue. To my view this was enough for purpose of maintaining integrity of sample drawn.

I am of the view therefore that the information levelled to the accused person was proved beyond any shadow of doubt.

Appreciation to Ms. Rehema Sakafu learned Prosecuting Officer and Mr. Robert Masige learned Counsel for their valuable representation during trial.

The accused is guilty and is convicted for the offence of illicit trafficking in narcotic drugs contrary to section 15(1)(a) Cap 95 R.E. 2019 (supra) read together with paragraph 23 of the First Schedule to and sections 57(1) and 60(2) Cap 200 R.E. 2019 (supra).



E.B. Luvanda
Judge
1/07/2022

SENTENCE

The penal statute prescribe a sentence of life imprisonment for the offence of this nature. However, Tanzania Sentencing Manual for Judicial Officers page 65, down size to a maximum of 30 years and minimum of twenty years. so far the offender has no previous conviction records, and inview of his mitigation that a family depend on him. I sentence him to a minimum sentence of twenty (20) years in prison.



E.B. Luvanda
Judge
01/07/2022