

**IN THE HIGH COURT OF TANZANIA  
CORRUPTION AND ECONOMIC CRIMES DIVISION  
AT SHINYANGA SUB-REGISTRY  
ECONOMIC CASE NO 5 OF 2021  
THE REPUBLIC  
VERSUS  
KAOMBWE LEONCE @ GASPAL**

**JUDGMENT**

**01/07/2022 & 4/08/2022**

**E.B. Luvanda, J**

The accused person above named is indicted for illicit trafficking in narcotic drugs contrary to section 15(1)(b) of the Drugs Control and Enforcement Act, 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 Crimes Control Act, Cap 200 R.E. 2019.

In the particulars of offence, it is alleged that on 18/06/2017 at Yitimilwa "A" Area along Musoma-Mwanza road within Busega district in Simiyu region the accused was unlawfully conveyancing khat commonly *mirungi* weighing 337.7 kilograms from Tarime to Mwanza by using a motor vehicle registration number T 300 DDW Toyota Mark II brand. The accused pleaded not guilty to the information.

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

There is no dispute that the accused person was not arrested at the crime scene. The evidence of D/Sgt Dominic (PW2) and D/Cpl Yasin (PW6) was to the effect that the culprit to whom they were in pursuit along Musoma-Mwanza road from Simiyu river, on arriving at Sogeska Yitimilwa, dashed out abandoning a car registration T 300 DDW Toyota Mark Two brand (exhibit P9), and disappeared in the forest. PW2 and PW6 did not manage to identify the culprit. According to PW2 and PW6, upon search in a car T 300 DDW they recovered documentations appertaining to the accused person and bearing his name to wit a contract of service (employment) of the accused exhibit P3, driving licence bearing the name of the accused exhibit P4, two passport size of the accused exhibit P6, a copy of a card (exhibit P5) in respect of a car T 300 DDW, motor insurance (exhibit P7) in respect for a car T 300 DDW. In other words, the evidence tendered by prosecution to connect the accused with the accusation is hinged solely on that circumstantial evidence. It is salutary principal on circumstantial evidence that it must points irresistibly to the accused's guilt. In other words, to vindicate conviction the circumstantial evidence must be consistent with the

accused's guilt, but also that the evidence is not reasonably consistent with innocence. To be precisely, the circumstantial evidence must lead to a conclusion of the accused's guilt without any interpolation.

Herein, PW2 and PW6 alleged to have seized accused's documentations above mentioned inside a car T 300 DDW where sixteen sulphate bags of khat were impounded. However, PW2 did not mention a contract of employment exhibit P3, driving licence exhibit P4, two passport size exhibit P6, as among items subject for handing over to the exhibit keeper PC Nasoro (PW4), immediately after seizure. In the same vein, PW4 did not mention those items as among things he received from PW2 during handing over. This gap, is a serious one.

Actually a defence by the accused (DW1) that he handed over to the police officer one Adam his driving licence exhibit P4 and two passport size exhibit P6 when he surrendered himself to Busega Nasa Police Station on 22/6/2017, shade a doubt on the prosecution testimony. This is because the prosecution were under obligation to eliminate any possibility of doubt for the Court to rely on this indirect evidence.

In **Jimmy Runangaza Vs Republic**, Criminal Appeal No. 159 'B' of 2017, Court of Appeal of Tanzania at Bukoba (unreported), at pages 9-10 the apex Court stated that;

*'In order for the circumstantial evidence to sustain a conviction, it must point irresistibly to the accused's guilt. (See **Simon Musoke Vs Republic**, (1958) EA 715). **Sarkar on Evidence** 15<sup>th</sup> Ed 2003 Report Vol. 1 page 63 also emphasized that on cases which rely on circumstantial evidence, such evidence must satisfy the following three tests which are:*

- (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.*
- (2) Those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; and*
- (3) The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else'*

The loophole depicted above lead to the probable interpolation that the contract of employment exhibit P3, two passport size exhibit P6 were introduced or brought later on by the owner of the car one Isabiry Faizo Addi in order to distance or disassociate himself to the crime committed.



This is because, a seizure certificate alleged to have been recorded at the scene is problematic for reasons to be shown hereinafter, was recorded and executed unilaterally. Again the alleged Isabiry Addi in his statement exhibit P10 was not specific as to when and at what time he visited at Busega Nasa Police Station. In exhibit P10 suggest Isabiry Addi was communicating with the accused on 22/6/2017. On defence the accused (DW1) stated that he surrendered at Busega Nasa Police Station at about at 09.00 hours on 22/6/2017. This fact was not cross examined by the prosecution. More important, in exhibit P10 reflect Isabiry Addi when visited at Busega Nasa Police Station, presumably on or after 22<sup>nd</sup> of June, 2017, he saw a car T 300 DDW was full of khat. On the other hand, the exhibit keeper PW4 said on 18/06/2017 after receiving those sixteen sacks of khat he preserved in the exhibit room (store) till on 20/06/2017 when he handed over to PW2 for submitting to the Weights and Measures Agency, where on the same date in the evening, PW2 handed over back the sixteen sacks of khat to PW4 who in turn preserved in the store. This fact was supported by PW2 who stated that on 20/6/2017 he took the sixteen sacks of leaves of khat in the store. This erode the credibility of PW2, PW4 and exhibit P10 generally, meaning that either of them is lying.

Apart from the above, a certificate of seizure exhibit P2, is also problematic, for one thing it reflect a seizure was effected on 17/6/2017 while the oral testimony of PW2 and PW6 suggest seizure was done on 18/06/2017. For another thing, exhibit P2 reflect a seizure was done at Masanza Kona Kiloleli, while PW2 and PW6 said it was at Sogeska hamlet Yitimilwa Village. On cross examination, PW2 stated that Sogeska hamlet Yitmilwa village and Masanza Kona Kiloleli is the same area. However, the information reflect a crime scene to be Yitimliwa "A" area. On cross examination, PW6 stated that there is Yitimilwa "A" and Yitimilwa "B". To be precisely, the testimony of PW2 and PW6 is at variance with the seizure certificate exhibit P2 on one hand and the information on the other hand. In the circumstances, a plea that those destinations connote one or the same place is doubtful. It defy logic to say Sogeska hamlet Yitmilwa village, Masanza Kona Kiloleli and Yitimilwa "A" refer to the same location.

Again the inventory for disposal of khat exhibit P1 at the second column reflect a date of 19/06/2017 which is neither a date of seizure nor date of destruction. On cross examination, PW2 said 19/06/2017 it is a date he prepared an inventory. But PW2 did not say if that is the requirement of a standard form to insert there a date of crafting an inventory.

There was also a complaint that exhibit P1 was doctored, in a sense that it reflect that the accused had appended a signature, while a copy availed to the accused in the committal bundle, his (accused) signature is missing. The prosecution made no reply to this comment, which amount to concession.

In view of the above, it cannot be said that the information levelled to the accused person was proved on the standard required for a proof of a criminal case, which is beyond a shadow of doubt.

Appreciation to Mr. Masambu learned Prosecuting Officer for the republic and Mr. Samwel Lugundiga learned Counsel for the accused for their valuable representation during trial.

The information for the offence of illicit trafficking in narcotic drugs contrary to section 15(1)(b) of Act 5 of 2015 (supra) read together with paragraph 23 of the First Schedule to and sections 57(1) and 60(2) of Cap 200 R.E. 2019, is dismissed and the accused person is acquitted forthwith.



E.B. Luvanda  
**Judge**  
4/08/2022

## **ORDER**

A motor vehicle registration number T300DDW Toyota Mark II (exhibit P9) to be returned to the owner.



E.B. Luvanda  
**Judge**  
4/08/2022