

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

THE CORRUPTION AND ECONOMIC CRIMES DIVISION

AT BUKOBA SUB-REGISTRY

ECONOMIC CASE NO. 4 OF 2022

(Originating from Economic Cases No. 11 of 2020 of the District Court of Bukoba at
Bukoba)

THE REPUBLIC

VERSUS

SAMWEL S/O ALEXANDER-----ACCUSEED

JUDGEMENT

6th October, 2022 & 7th October, 2022

MANYANDA, J.

Samwel s/o Alexander, the accused, is indicted for unlawful possession of narcotic drugs, contrary to section 15(1)(a), (2) and 3(iii) of the Drugs Control and Enforcement Act, read together with Paragraph 23 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crimes and Control Act.

In the particulars of offence, it is alleged that on 4/4/2019 at Nyakabonde Village within Biharamulo District in Kagera Region, he was

found in possession of narcotic drug, to wit, 515 Kilograms of cannabis Sativa, commonly known as "Bhangi".

The accused person denied all the allegations in the information.

To prove their case the prosecution summoned a total of five (5) witnesses as follows: -

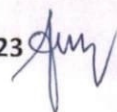
1. G. 7973 CPL Elimboto who briefly testified that he was the exhibit keeper at Biharamulo Police Station. On 5/4/2019 received from Sgt Robert 21 sacks of dried herbs which was believed to be narcotic drug called cannabis sativa (bhang).

After filling in the chain of custody form, both of them signed handing over of the said 21 sacks.

Then, he registered the same into the Exhibit Register Book and labelled each sack with a case file number BI/IR/597/2019 and with Exhibit Register number 34/2019 as well.

He tendered both the chain of custody form and the 21 sacks of bhang as Exhibits PI and PII ⁽¹⁾ - ⁽²¹⁾. He identified the 21 sacks by the colour and the materials they are made from being plastic fibers and the marks he labelled on them.

In cross examination he stated that he kept the 21 sacks until he brought them in court. That some samples were taken on 24/4/2019



and sent to the Government Chemist Laboratory Agency for analysis the result which confirmed to be bhang. That in his examination in chief, he didn't tell if the 21 sacks were weighed and the weight marked on them. That, the sample taken to the Government Chemist Laboratory Agency was returned on the same day. He stated also that the accused was not present when he received the 21 sacks.

In re-examination in chief, he clarified that the samples were mixed back with the contents in the 21 sacks from which were taken.

2. F. 5234 D/CPL Ally testified that been an In-charge of an out-post Police Station at Kikoma on 4/4/2019 while in his normal patrol got tipped by his informer that there was narcotic drug known as bhang at the accused's house. He headed there at in company of his colleague police officers. On arrival at the accused's house at about 07:00 in the morning which was at Rwakirinda - Nyakobonde village knocked at the door whereas both the accused and his wife came out. After introducing himself and his colleague police officers and informing the suspect about their intention of searching his house, the accused allowed them. PW2 found one **Ezekiel Leonard** a co-villager of the accused to witness the search because he found no local leader.

It was his testimony that a search was conducted in the course of which sacks filled with dried herbs, which PW2 believed to be bhang, were found. In the sitting and sleeping PW2 collected a total the 21 sacks and filled a seizure certificate on which the accused and his wife Elizabeth signed, he too and his colleagues signed, PW3 **Ezekiel Leonard** as an independent witness also signed.

Then, he arrested the accused and carried both the accused and the 21 sacks to Kikoma Police Station using their motorcycles and hired others. All the 21 sacks were drove to Kikoma Police Station under his escort.

Later on, the same day, he handed the said 21 sacks to Sgt Robert who carried them together with the accused using a police motor vehicle to Biharamulo Police Station. This witness testified that the handing over was done using a chain of custody form. He tendered the search certificate as Exhibit PIII. He Also identified both Exhibit PI (chain of custody form) and Exhibit PII ⁽¹⁾ - ⁽²¹⁾ (the 21 sacks of bhang).

In cross examination PW2 stated that the accused does not know how to read and write, hence he didn't read the search certificate Exhibit PIII but signed by a thumb impression on it. That he didn't

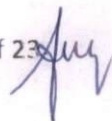


see any sack with a word "**Sanda**" and that he didn't fill the last column in the chain of custody for because it was illegible.

In re-examination he explained that he used **Ezekiel Leonard**, a civilian, as an independent witness to witness search because he could not get a local leader. He also explained that the suspect signed on a search certificate before him after the search was completed.

3. **Ezekiel Leonard** testified that he is a peasant living at Nyakabonde village and knew the accused as his co-villager. On 4/4/2019 witnessed a search at the accused's house where 21 sacks filled some dried herbs were found. He didn't know the name of the herb he saw in the sack. Later on, he learnt from PW2 that it was bhang. He signed on the search certificate, Exhibit PIII, and each of them including the suspect signed on it one after another. He identified the 21 sacks as been the Exhibit PII ⁽¹⁾ - ⁽²¹⁾ that the sacks were made of plastic fibers with whitish and greenish colour.

In cross examination PW3 stated that he was not told if the 21 sacks contained bhang and that he signed on search certificate Exhibit PIII without reading it. That the sacks he saw at the suspects house are common, and that Exhibit PII ⁽¹⁾ - ⁽²¹⁾ are the same sacks he saw at the suspect's house.



In re-examination he explained that Kisumo is the village name and Nyakabonde is a Hamlet name. That each one who participated at the search including the suspect and his wife signed on exhibit PIII search certificate one after another. He insisted that the sacks he saw in court that is Exhibit PII (1) - (21) are the same he saw at the suspect's house.

4. H. 354 Cpl. Obadia testified that he participated during the searching exercise at the accused house in which 21 sacks filled with substance believed to be bhang were found. That, the search was witnessed by an independent witness one Ezekiel Leonard. He signed on the search certificate together with other participants of the search. He identified the 21 sacks (Exhibit PII (1) - (21)) by their colour been whitish and greenish.

This witness testified that the 21 sacks were carried by motorcycle under their escort to Kikoma Police Station and that on the evening of the same day a police motor vehicle carried them together with the suspect to Biharamulo Police Station.

In cross examination he stated that he saw some sacks in the accused's house marked with a word "sanda" and that in Exhibit PIII, a search certificate, there is no sack recorded that it written with a word "sanda".



That in the chain of custody exhibit PIII it is written "madawa ya kulevya aina ya bhangi" meaning "narcotic drugs namely bhang" not "suspected narcotic drugs namely bhang". He stated also that the 21 sacks were transported by motorcycles under Police escort from accused's house to Kikoma Police Station.

In re-examination in chief, PW4 explained that one of the 21 sacks seized at the accused's house was written with the word "sanda" on it and it was the one he identified in court as among the sacks in Exhibit PII (1) - (21).

5. E.8213 D/SGT Nyanda testified that he was the investigator of the case, that on 5/4/2019 after studying the case file he interrogated the accused and inspected the exhibit which he found to be 21 sacks filled with substance he suspected to be bhang. He signed in the chain of custody to acknowledge receipt of the 21 sacks of bhang. Then, on 10/5/2019 he called a Weight and Measures Agency officer who weighed them and got a total of 515 kilograms. He tendered a Weight Report Letter as Exhibit PIV.

On 24/5/2019 he collected samples from each sack for sending to the Government Chemist Laboratory Agency. He gave the sample to Sgt Evodius and recorded in a chain of custody. The samples were analyzed by one Paulo P. Mtango who formed opinion that the

same was cannabis sativa, or bhang and the same is narcotic drug because it causes dependency (drug addiction) and psychiatric effects and body immunity weakness generally.

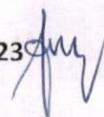
He tendered a report from the Government Chemist Laboratory Agency as Exhibit PV. This witness testified further that the samples he had taken were returned to him by Sgt Evodius on 24/5/2019.

He identified the 21 sacks in Exhibit PII ⁽¹⁾ - ⁽²¹⁾ by its colours been whitish and greenish with strips on sides. Also identified them by the labels of the case file BI/IR/507/2019 and Exhibit Register Book number written on them by PW1, the exhibit keeper as "Reg. No. 34/2019".

In cross examination PW5 stated that he didn't interrogate the suspect because he just took over investigation at a later stage although he asked him some questions.

That the accused was arraigned in court before the result from Government Chemist Laboratory Agency and weight by Weight and Measures Agency was established because it was taking too long for the suspect to be under police custody without been taken to court.

That the sample was taken to the Government Chemist Laboratory Agency on 24/5/2019 and on the same day he got the result from



Sgt Evodius. That, it was possible to get the results on the same day because the distance between Biharamulo and Mwanza is short. PW5 stated further that he wrote on Exhibit PV "*majani yadhaniwayo kuwa ni dawa ya kulevya aina ya bhangi*" meaning "herbs believed to be narcotic drug known as bhang" but at the same time, he signed on Exhibit PI, a chain of custody form, written with the words "*madawa ya kulevya aina ya ghangi kiasi cha gunia ishirini na moja*" meaning "21 sacks of narcotic drug known as bhang". He stated that, despite the words written on Exhibit PI, still he chose to send the samples to Government Chemist Laboratory Agency for purpose of confirmation whether or not the substance was truly narcotic drug.

That the sample report was submitted to him on 31/5/2019, but it bears a rubber stamp impression of the Government Chemist Laboratory Agency dated 19/12/2019. Also, he stated that there was no any other sample that was resent to Government Chemist Laboratory Agency.

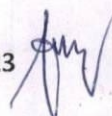
In re-examination in chief PW5 explained that the chain of custody form was just recorded that the 21 sacks were filled with bhang without confirmation. He chose to send samples to Government Chemist Laboratory Agency for confirmation. He did not elaborate

about the state differences on exhibit PV; the Government Chemist Laboratory Agency report.

After closure of the evidence by the prosecution, parties addressed the Court, however, it was found that the accused has a case to answer. After been addressed of his rights, the accused chose to defend by giving evidence on oath without calling any witness nor tendering any exhibit.

In his defence, DW1 testified in chief that he was at his home inside his house on 4/4/2019 when police officers arrived. They arrested him and took him to Midaho Police Station where he was told that he was found in possession of bhang. He denied the allegations and said that he neither saw any bhang nor knew it before. That the police officers forced him to sign on a search certificate (Exhibit PIII) by threatening to injure him therefore he signed on it in order to save his skin. DW1 testified further that he does not know how to read and write, so he fixed a thumb impression without even knowing what was written on it.

He denied knowing Ezekiel Leonard, PW3, he thought that he was a friend of the Police when he saw him at his house, he denied the 21 sacks of bhang been found in his possession and that there was no any local leader during the alleged search. Further to that, on the evening of the same 04/04/2019 was carried from Midaho Police Station together with the 21



sacks of bhang to Biharamulo Police Station where they arrived at night time.

In cross examination DW1 stated that Police officers went to his house on the morning of 04/04/2019, they arrested him and told him that he was dealing in narcotic drug called bhang. That, he signed on a search certificate under duress.

Following closure of the case for both sides, the counsel for both parties chose not to make final closing submissions, they left it to the court.

It is a cardinal principle of the law in criminal law that it is the prosecution which is required to prove their case beyond all reasonable doubts; and that duty never shifts to the accused. In the case of **Pascal Yoya @ Maganga v. Republic**, Criminal Appeal No. 248 of 2017 (unreported) the Court of Appeal stated as follows: -

*"It is a cardinal principle of criminal law in our jurisdiction that, in cases such as the one at hand, it is the prosecution that has a burden of proving its case beyond reasonable doubt. **The burden never shifts to the accused. An accused only needs to raise some reasonable doubt on the prosecution case and he need not prove his innocence. In the just cited case of Mohamed Haruna @***

Mtupeni & Another, Criminal Appeal No. 25 of 2007
(unreported) the Court stated that: -

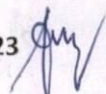
'Of course, in cases of this nature the burden of proof is always on the prosecution. The standard has always been proof beyond reasonable doubt. It is trite law that an accused person can only be convicted on the strength of the prosecution case and not on the basis of the weakness of his defence'.

This Court also said in the case of **Mwita and Others v. Republic** [1977] LRT 54, as follows: -

"The appellants' duty was not to prove that their defence was true. They were simply required to raise a reasonable doubt in the mind of the magistrate and no more."

The main issues in this case are as follows: - One, whether the accused person was found in possession of the 21 sacks suspected to contain narcotic drug known cannabis sativa or bhang; and Two, that the said substance was in fact narcotic drug namely, cannabis sativa or bhang.

The word "possession" is not defined in the Drugs Control and Enforcement Act. However, the superior court of this land, the Court of Appeal of Tanzania through cases, without a number has defined the term "possession".



For instance in the case of **Mwinyi Jamal Kitalamba @ Igonza and 4 Others vs Republic**, [2020] TLR 508 the Court of Appeal of Tanzania stated as follows: -

"In view of the evidence as viewed above we think that all the Appellant retained control over the tusks and this accordingly each of them had possession of the tusks".

In the case of Simon **Ndikulyaka vs Republic**, Criminal Appeal No. 231 of 2014 (unreported) cited to us by Mr. Msemu, we applied our holding in the case of **Moses Charles Deo vs Republic** [1987] TLR 134 that: -

"For a person to be found to have possession, actual or constructive, of goods, it must be proved either that he was aware of their presence and that he exercised control over them or that the goods came, albeit in his absence, at his invitation and arrangement but it is also true that mere possession connotes knowledge and control" (emphasis added).

In the case at Land, the accused has admitted at the preliminary hearing in undisputed matters and in his testimony in defence that police officers including PW2 and P4 together with a civilian PW3 went to his house in the morning of 04/04/2019. However, he denies to have been found with the 21 sacks which were filled with substance suspected to be narcotic drugs namely, cannabis sativa or bhang.

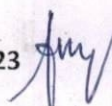
In his testimony he further admitted that he met with the 21 sacks at the police post at Mikoma Police Station which he calls Midaho Police Station. He also admitted that he signed on exhibit PIII, a search certificate.

However, he alleged that he did so at the police station which he called Midaho and that he did so under duress.

On the other hand, the prosecution lead evidence through PW2, PW3 and PW4 that when they went to the accused's house, they did not only arrest him as he contends, but also searched his house and found the 21 sacks in which, PW2 and PW4 suspected to be filled with narcotic drug called cannabis sativa or bhang. PW3 said that he saw dried herbs which were protruding at the top through holes of the closed sacks. Although he didn't know that substance, it was his testimony that the same sacks were taken by the Police.

These three witnesses testified further that they signed the search certificate at the accused's house after the 21 sacks were taken out of the house. He saw the suspect signing on Exhibit PIII, the search certificate.

As it can be seen, the controversy here is based on credibility of the witnesses.



PW2 and PW4 are Police Officer who testified that they introduced themselves to the accused and told him their purpose, it was to search his house. Then PW2 went on to find a local leader who was not available; hence he took PW3. The accused said if he was found with the sacks, then his local leader could have witnessed.

Absence of local leader was well elaborated by PW2, and presence of PW3 in lieu of the local leader is admitted by the accused who alleged that he thought PW3 was a mere friend of the Police Officers.

Be it as it may, it is not disputed that PW3 was present at the accused's house when search was conducted, he knew the accused before, as his co-villager, the accused purported to deny knowing him. However, PW3 was not cross examined on the fact of knowing the accused prior.

In law failure to cross examine a witness a vital fact by a party is taken to amount to admission of the truth of that fact. That was the holding of the Court of Appeal of Tanzania in the case of **Sebastian Michael and Another vs the Director of Public Prosecutions**, Criminal Appeal No. 145 of 2018 where it stated as follows:

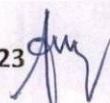
"It is trite law that failure to cross examine a witness on a material evidence amounts to acceptance of it."

See also the cases of **Bakari Abdalah Masudi vs Republic**, Criminal Appeal No. 126 of 2017 cited in **Karim Seif @ Islam vs Republic**,

Criminal Appeal No. 161 of 2017 and **Nyerere Nyegue vs Republic**, Criminal Appeal No. 67 of 2010 (all unreported).

By evading to cross examine PW3 about their familiarity, the accused was trying to evade the testimony of PW3 that they knew each other and that he was present at the search. I say so because initially the accused said he saw police officers, later on PW2 brought PW3 whom he thought was their friends. If he was a friend of police, why then didn't they go with him at the accused's house. Moreover, the fact admitted by the accused that the police arrived at his house without PW3 and PW2 asked the accused about the whereabouts of the local leader and then went to find him basing on directions of the accused but didn't find him hence came with PW3 and that he had no any grudges with PW3 who also had no any reason for framing the accused with the case, makes, it credible that PW3 was called to witness the search.

PW3 testified that a search was conducted and the 21 sacks were found inside the accused's house. PW3 testified that he signed Exhibit PIII at the accused's house and saw the accused and his wife Elizabeth before he was let to go away. He didn't go to Police at Midaho/Kikoma and the accused did not tell if the PW3 went to Midaho/Kakoma. In my view PW2, PW3 and PW4 are credible witnesses, their testimony is worthy of belief.



I am of increasingly view that the 21 sacks were found inside the house of the accused. He was aware of their existence and exercised full control over them because they were found in his house at the sitting room and sleeping, room. His house was closed when the police arrived and it was the accused who opened the house for them. In law it can safely be said that he was in actual possession of the 21 sacks which were suspected to contain narcotic drug called cannabis sativa.

The story by the accused that he was framed up with the possession of the 21 sacks at Midaho/Kikoma Police Station is unsupported by the evidence. I find that the first issue is answered in affirmative.

Now having found that the accused was found in possession of the 21 sacks suspected to have narcotic drugs, the next question is whether the said sacks indeed contained narcotic drugs. This will entail evidence of concerning movement of the said 21 sacks from the accused's house to Biharamulo Police Station through Kikoma Police Station, then to the Government Chemist Laboratory Agency and later on to this court.

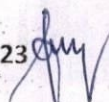
It is evidence of PW2 and PW4 that they carried both the suspect and the 21 sacks on motorcycle convoy under their escort; by then PW3 was allowed to proceed with his business. PW4 said he drove in front and PW2 behind. That the said sacks were temporarily kept at Midaho/Kikoma Police Station and then were transported in a police motor vehicle by Sgt

Robert to Biharamulo Police Station where PW1 Cpl. Elimboto received them on the 05/04/2019 and labelled them. Then PW1 kept the said 21 sacks. In occasions he issued them to PW5 Cpl. Nyanda for weighing and taking of sample. In all these occasions, a special handing over form called "chain of custody form" was used for handing of the 21 sacks and the samples taken by PW5, from one person to another. It is exhibit PI.

It was a concern by the defence that the last column of Exhibit PI was not filled up, the prosecution witnesses elaborated that Exhibit PI is a standard form and that the last column was illegible and there is no such requirement in Exhibit PI.

I have examined Exhibit PI and found that the last column is truly illegible however that does not diminish its importance. Some of legible words in the column depict that it is the type of transport which is required to be recorded therein. In my view, the testimonies of the witnesses elaborated the means of transport used to ferry the exhibits.

According to PW2 and PW4, it was motorcycles which were used for transporting the 21 sacks recovered in the accused's house to Midaho/Kikoma Police Station and PW2 D/CPL Ally testified that it was a police motor vehicle, that was used to ferry them from Kikoma to Biharamulo Police Station and it was a police motor vehicle again that



carried them from Biharamulo Police Station to this court. The issue of type of transport used to carry the 21 sacks is not in controversy.

The question is whether, it was the very 21 sacks which were weighed by Weight and Measures Agency officer and samples taken to Government Chemist Laboratory Agency, and ultimately tendered in this Court as exhibits.

In his testimony PW1 stated that he received the 21 sacks from Sgt Robert on 05/04/2019. This is because the sacks were taken from Kikoma according to PW2 late in the evening of 4/4/2019. The accused himself testified that they arrived at Biharamulo Police Station at night.

However, in the morning of 05/04/2019 the same sacks were received and kept by PW1 after labelling with case file number and Exhibit Register Book number in the exhibit room and recorded in the chain of custody form Exhibit PI.

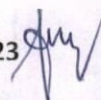
In court, PW1 identified the marks he labelled on Exhibit PII (1) - (21). PW4 identified one sack which was written with a word "sanda" that he saw such a word at the accused home during search in some sacks. In court, he showed a sack with such a word in Exhibit PII (1) (21), it was sack number PII(3) which bears the word "sanda".

From the evidence of PW1 and PW4. I am satisfied that the 21 sacks which were filled with substance believed to be bhang were the same found in the accused's house on 4/4/2019 and the same comprise the Exhibit PII (1) - (21).

The accused testified that he didn't know how to write and read, therefore, in my understanding, he was trying to tell the court that he could not write the word "sanda" on the sack. In my view this is not an issue. I say so because the sack might have been used for other purposes and so labeled before been used by the accused. Even if it can be said that it was labeled by another person, that fact does not eliminate the fact that the said sacks were found in possession of the accused.

Moreover, it was the concern by the defence that Exhibit PIII didn't include any sack labelled "sanda". In my view, by mentioning the goods seized from the accused's house during the search that they were 21 sacks suspected to contain narcotic drug called bhang, the search certificate included enough for the witnesses to explain how they identify the goods in their testimonies.

In my firm views, there was established a chain of custody which links exhibits PII (1) - (21) with the 21 sacks found under possession of the accused in his house on 04/04/2019.



Further, PW5 testified that he took the samples from each of the 21 sacks and gave Sgt Evodius to take them to the Government Chemist Laboratory Agency. It was his further testimony that the said Sgt Evodius returned the samples on the same day.

A report of the Government Chemist Laboratory Agency which was admitted as Exhibit PV reveals that the sample contains Cannabis Sativa (bhang) as a chemical called Tetrahydrocannabinol (THC) was seen. That the said chemical causes drug dependence (drug addiction), and body immunity weakness.

The report was released on 31/5/2019 but has a rubber stamp impression of the Government Chemist Laboratory Agency dated 19/12/2019. The defence concern is that the date differences raises some questions about the authenticity of exhibit PV.

In my view, from the prosecution evidence, it is a fact that PW5 sent the sample to the Government Chemist Laboratory Agency and got a report on 31/5/2019. This evidence is revealed in Exhibit PI and Exhibit PV. Then the fact that the sample was examined by Government Chemist Laboratory Agency remains an unshaken truth.

The differences of dates on exhibit PV in my views does not go to the roof of the case. To this end the second issue that whether the 21

sacks found in possession of the accused contains narcotic drugs called cannabis sativa or bhang is answered in affirmative.

In the result, for reasons stated above, I find the accused, Samwel s/o Alexander guilty of the offence he is charged with. Consequently, I do hereby convict him with the offence of unlawful possession of narcotic drugs contrary to section 15(1)(a), (2) and (3)(iii) of the Drugs Control and Enforcement Act read together with paragraph 23 of the First Schedule to and section 57(1) and 60(2) of the Economic and Organized Crimes and Control Act. Order accordingly.

Dated at Bukoba this 7th day of October, 2022.




F.K. MANYANDA

JUDGE

SENTENCE

The accused Samwel Alexander has been convicted with offence of unlawful possession of narcotic drugs contrary to section 15(1)(a), (2) and (3)(iii) of the DCEA read together with paragraph 23 of the First Schedule to and section 57(1) and 60(2) of the EOCCA.

The maximum sentence is life imprisonment. However, under the Tanzania sentencing manual for Judicial Officers, in particular at page 74, judicial officers are bound to inflict sentence between the minimum sentence of 20 years and maximum sentence of 30 years.

Under the circumstances of this case and by considering the aggravating and mitigating factors that he is a first offender, has been in remand prison for about four (4) years now, I do hereby sentence the said Samwel s/o Alexander to 20 years imprisonment.


F. K. MANYANDA

JUDGE

7/10/2022

ORDER

The 21 sacks of cannabis Sativa, Exhibit PII(1) to (21) which was the subject matter of this case be forfeited to the government and the same will be destroyed in accordance with the DCEA and regulations thereof. It is ordered.




F. K. MANYANDA

JUDGE

7/10/2022