

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION
AT MOSHI SUB-REGISTRY

ECONOMIC CASE NO. 15 OF 2021

THE REPUBLIC

Versus

GERSON LAZARO MOLLEL

JUDGMENT

26/09/2022 & 26/10/2022

E.B. LUVANDA, J.

Gerson Lazaro @ Mollel the accused herein, is indicted for trafficking in narcotic drugs. In the particulars of offence, it is alleged that on 16/05/2020 at Mwanga Check Point area within Mwanga District in Kilimanjaro Region, the accused person was found tracking 113.25 kilograms of narcotic drugs namely cathe edulis (khat) commonly known as "mirungi". The accused denied the offence.

The prosecution was led by Mr. Timotheo Mmari learned State Attorney and Ms. Grace Kabu learned State Attorney. Mr. Emmanuel Anthony learned Advocate and Mr. Elisante Kimaro learned Counsel, were representing the accused person.

The issue is whether the information levelled to the accused was proved on the standard.

Principally, the facts of this case were premised on direct evidence. It was the testimony of ASP Asia Juma Matauka (PW2) that on 15/5/2020 at 21:00 hours while on patrol, she was tipped by the informant that a car T709 BCK Fuso loaded khat, and was on the way from the Junction descending to Dar es Salaam. PW2 and her colleague placed a barrier at the Check Point Mwanga, where at 00:00 hours on 16/5/2020, that car T709, BCK Mitsubishi Fuso arrived, and was stopped by Cpl Cruso (part of patrol team), where PW2 introduced to the driver. Thereby a search was conducted by DC Zephania (PW3), in a body of that car, where after in-depth search they found three polysack (one had 67 bundles, another 95 bundles and the last one 98 bundles), total of 260 bundles wrapped by gazette and white sellotape, inside contained fresh leaves of khat (exhibit P2). PW2 seized those three polysack containing 260 bundles of fresh leaves via a seizure certificate exhibit P3. It was the wording of PW2 and PW3 that the accused acceded being responsible for those khat, alleged he loaded them, secretly at Chekeleni, without involving his conductor one Dickson Filimon Semion for purpose of obtaining extra pocket money. In view of that, the accused

was arrested. Meanwhile, a car T709 BCK Mitsubishi Fuso was released and handed over to the owner one Tegemea Martin Mfinanga via a handing over certificate exhibit P4. The conductor Dickson Filimon Semion was made a state witness, as per his statement exhibit P8, where he stated that those three white sacks were loaded by the accused at a certain destination, without disclosing as to what contained inside.

Therefore a defence by the accused that Tegemea Mfinanga (alleged owner of Fuso) and Magreth Talishishi Mushi (owner of avocado loaded in a Fuso) were not summoned by the prosecution, is untenable. This is because, the accused (DW1) on his defence leaned on the duo that is Tegemea Mfinanga and Magreth Talishishi Mushi @ Mama Frank, where DW1 twisted a story and pleaded that Tegemea Mfinanga was a mere driver who hired DW1 on day worker basis to ferry to Dar es Salaam a cargo of avocado loaded in a Fuso. And added that the whole cargo including sulphate bags wrapped by gazette, belonged to Magreth Talishishi Mushi, on account that when he (DW1) arrived at Mamsela Rombo to pick or drive a car, already the cargo was loaded in a Fuso. It was expected for him to summon the duo for cross examination on the pleaded facts. But the accused choose not to utilize that avenue, as such his story is taken as concoct. Above all, when PW2 stated

that Tegemea Mfinanga was the owner of a car, she was not cross examined vis-a-vis a fact introduced by DW1 alleging being a driver, rather during cross examination the defence Counsel took a line that a car ought to be handed over to Ms. Arusha United Cargo Carries Limited. A fact that all bags were similar and resembled that is avocado and khat, is immaterial. Essentially the accused did not dispel a fact that those three sulphate bags of khat wrapped by gazette were impounded in a car which he was the in-charge driver. It is therefore taken that the accused was in concession of a fact that Tegemea Mfinanga is the owner and the accused is the one who dialled him call after arrest.

A fact by DW1 that a car was not searched at the Check Point Mwanga, rather at the police station, is an afterthought, as this issue was not subject for cross examination to PW2 and PW3. What was cross examined to D/Cpl Emmanuel (PW4), was a fact that in exhibit P8, the conductor alleged that those sulphate bags were opened at the police station. But in exhibit P8, the conductor did not say that no search was conducted at the scene Check Point Mwanga. More important, a seizure certificate exhibit P3, indicate vivid that a search and seizure was done at Mwanga Check Point in a car registration

number T709 BCK Fuso. Actually this fact regarding a point where search was done, was not on contention during trial.

A fact that a car T709 BCK was not recorded as among item seized in a seizure certificate exhibit P3, is not fatal. This is because, I have explained above, that in exhibit P3 a car Fuso featured therein as a crime scene.

An argument that a car was afterward released via a handing over certificate exhibit P4, cannot be taken as a material fact. In other words, the same did not denumb the fact in issue that the accused was arrested trafficking the three sulphate bags of khat (exhibit P2)

A fact that there was delayment in handing over exhibit P2 between PW2 (seizing officers) and Cpl Graciano (PW1) exhibit keeper, is unmerited. PW2 explained that the delayment were actuated by the fact that on the material night PW1 was indisposed, which fact was confirmed by PW1 himself under oath. In view of that, PW2 preserved it at her office pending formal handing over to PW1.

A fact that a version of a story that PW2 preserved exhibit P2 at her officer is missing in her statement, to my view that is not fatal. What is important here is that there was no brokage of a chain of custody between PW2 and PW1.

The argument that the three envelopes of sample were not stamped a rubber stamp for top secret, is devoid of merit, because those sample were drawn by the chemist Celine Boniface Maghembe at the office of Chief Government Chemist Northern Zone Arusha, where analysis was done by the chemist Michael Sairolie Bernard (PW6). Strictly speaking, that rule is applicable when sample are drawn by the sampling officer elsewhere.

The argument that a report for analysis form DCEA 009 exhibit P7, is a joint report or result, in that it did not differentiate results for sample in envelope A, B and C. PW6 explained it all that the results of analysis were the same, but if the results were different (example some heroine and khat) he could make it separately. Exhibit P7, item 2 the chemist indicated to have conducted analysis in respect of sample of leaves in exhibit (envelope) A, B and C and confirmed all were khat. As such the argument of separate lot of results melt away.

Appreciation to the learned defence Counsel for their valuable representation and laboured submission.

That said, the information for trafficking khat was proved on the standard.

The accused is therefore guilty for trafficking khat and is convicted forthwith.



E.B. Luvanda
Judge

26/10/2022

