

**IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION
AT MOSHI SUB-REGISTRY
ECONOMIC CASE NO 1 OF 2022
THE REPUBLIC
VERSUS
MOSES SWAI PALLANGYO**

JUDGMENT

23/09/2022 & 29/09/2022

E.B. Luvanda, J

Moses Swai Pallangyo the accused herein, is indicted for 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 16/07/2020 at Njia Panda Himo area within Moshi District in Kilimanjaro Region the accused person was found trafficking 376.75 kilograms of narcotic drugs namely cannabis sativa commonly bhangi. A plea of not guilty was entered after the accused person pleaded not guilty to the information.

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

It was the testimony of Sgt Deogratius (PW2) while on patrol along Njia Panda Himo towards Town Centre Moshi, he spotted a roof of a white car parked on scrub bush. Out of curiosity, they approached that car T802AFZ Toyota Hiace (exhibit P7), surrounded it and found the accused seated on the steering wheel, on the verge of igniting engine and closing doors, seemingly scared on seeing police officers approaching closer towards him. The attempt to evacuate was abortive, as Sgt Patricia (PW5) snatched the ignition key and handed over to PW2, the later apprehended the accused. According to PW5, she opened a main door of that Hiace, and saw it loaded full sacks therein. PW5 poked one sack and saw dry leaves with seeds smelling and looking like cannabis sativa. They took the accused, a car loading cargo proceeded to Moshi Central Police Station where a formal search was conducted in respect of Hiace exhibit P7, in the presence of an independent witness Shabani Saidi Chalamila (PW7). On the said search, they seized fifteen sacks of sulphate bags containing dry leaves and seeds of cannabis sativa, including a phone Tecno brand exhibit P2 and cash money Tsh 340,000/= exhibit P3 which were impounded into the trouser pockets of the accused. Those items were all seized via a seizure certificate exhibit P8.

On defence, the accused (DW1) twisted a story pleading that he was arrested while attending a short call of nature near a Police Check Point, for accusation of environmental pollution. DW1 explained other facts alleged transpired during his arrest, including a fact suggesting to have tendered an apology to the purported arresting officers at a place where he was pressed by a short call of nature to the maximum and in the course of a long discussion those police officers asked him to pay a fine of Tsh 100,000 for them to let him under escort free and threatened to take him to police station, in default. It was the story of DW1 that he refused and he was restrained there for quite long, then taken on the parking lot at the Central Police Moshi where he was exhibited a car Toyota Hiace, which he disowned thereby he was detained into exhibit store (informal cells) later harassed and taken to the lockup. All these facts stated by DW1 including a fact that the seizing officers declared a less sum of cash seized from him, Tsh 340,000 instead of actual amount of Tsh 347,000/=, were not tested to the arresting officers PW2 and PW5. As such they are taken as afterthought and a mere defence by the accused to distance from the accusation. Therefore, are disregarded altogether.

To my view, the testimony of PW2 and PW5 was cogent. The duo prosecution witnesses testified consistently to each other. Principally, their testimonies

deserve credence. My findings are grounded on a fact that even a cross examination by the defence Counsel did not manage to shake their credibility. Issues of serial number on notes in exhibit P3, or failure by PW2 to mention other colours of exhibit P7, blue and black found on sticker and pipe on the bottom of a car, or S/Sgt Michael (PW6) failure to mention a dominant colour of exhibit P7, that is white colour, to my view is not fatal. Equally a question of conducting search at the police instead of doing it at the scene of crime, the same was justifiable, because PW2 and PW5 stated that it was for security reasons, they did not have guns, and it was on scrub bush, no residential houses. Also they did not have documentation for search to wit a seizure certificate, as such necessitated them to postpone conducting search at the scene.

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

Appreciation to Mr. Timotheo Mmari and Ms. Grace Kabu learned Prosecuting Officers, Mr. Wilace Shayo learned Counsel for the accused, for their valuable representation during trial.

The accused person is guilty and convicted for the offence of illicit trafficking in narcotic drugs contrary to section 15(1)(a) of Cap 95 R.E. 2019 (supra) read

together with paragraph 23 of the First Schedule to and sections 57(1) and 60(2) of Cap 200 R.E. 2019 (supra).



E.B. Luvanda
Judge
29/09/2022