

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION**

AT MOSHI SUB-REGISTRY

ECONOMIC CASE NO. 11 OF 2021

THE REPUBLIC

VERSUS

1. DOROTEA MIRANDA SHAIKH

2. IMTIAZ HUSAIN SHAIKH

JUDGMENT

ISAYA, J.

Initially, this case involved two persons, Dorotea Miranda Shaikh and Imtiaz Husain Shaikh who both stood charged with the offence of trafficking in narcotic drugs contrary to Section 15 (1) (a) of the Drug Control and Enforcement Act, No. 5 of 2015 ("the Drugs Act), as amended by Act No. 15 of 2017, read together with Paragraph 23 of the First Schedule to, and section 57 (1) and 60(2) of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002], as amended ("the EOCCA").

It is alleged in the information that, on the 28th June, 2018, at Kilimanjaro International Airport (KIA), within Hai District in Kilimanjaro Region, the accused persons jointly and together were found trafficking in narcotic drugs namely, Heroin Hydrochloride weighing 4,886.06 grams. However, it is on the record that, the second accused person Imtiaz Husain Shaikh passed away on

25/8/2021 while in remand prison at Karanga Prison. Following his death, on 22nd, October 2021 when the case was called on for plea taking and preliminary hearing before this Court, the prosecution side prayed the case against second accused Imtiaz Husain Shaikh be abated under section 284A of the Criminal Procedure Act [Cap. 20 R.E. 2019] ("the CPA"). Consequently, the case against the second accused was marked abated in terms of Section 284A of the CPA. Therefore, the charge continued against the first accused person, Dorotea Miranda Shaikh ("hereinafter to be referred as the accused person") who pleaded not guilty to the offence. It should be earmarked that on the 19th May 2022 the trial commenced before my predecessor Hon. Banzi, J. The prosecution had paraded six (6) witnesses before I took over the trial. On taking over, the accused was duly addressed in accordance with section 299 of the Criminal Procedure Act, Cap 20 R.E 2022. She opted to proceed from where my predecessor judge ended.

The prosecution side through Ms Cecilia Shelly, Learned Principal State Attorney, Mr. Edward Mokiwa, Ms. Tully Helela, and Mr. Mabuba Malima, all learned State Attorneys called in nine (9) witnesses and tendered twenty-three (23) Exhibits in a bid of proving their case against the accused person beyond reason doubt. On the other hand, the accused person under the services of Ms. Magdalena Kaaya and Mr. Emmanuel Anthony learned Advocates testified under oath as the sole witness for defence and did not tender any exhibit.

The evidence by the Prosecution reveals that, on 28/06/2018 around 8:45 pm, a police officer namely, Inspector Venance Gilbert Mndewa (PW2) was on duty at Kilimanjaro International Airport (KIA), Hai District. While he was there, he received information from his informant that at the Kilimanjaro International Airport (KIA) area there were two passengers, husband and wife travelling to Dubai by Fly Dubai Airlines trafficking narcotic drugs. Following the said information, PW2 informed D/C Lucas, the security manager of KIA, Justine Kisusi (PW9) and Kuruthumu Hamis. Together they went to Fly Dubai counter where he found that the said passengers were already given boarding pass. Officer of Fly Dubai led PW2, PW3, PW9 and Kuruthumu Hamis to the lounge at the Airport and the said officer was shown the accused person and the deceased and he introduced himself to them. Thereafter the accused person and the deceased were taken to the Holding Baggage Screen (HBS), the baggage security area. On their arrival, Remmy Andrew Simon (PW4) told Glory Mmary (PW8) that the four bags of the accused and the deceased which were inspected or screened at HBS and sent to sorting area to be returned at HBS. Thereafter the four bags were returned to HBS by PW8 through conveyer belt. After identifying those bags by names on the tag D. Shaikh Mrs, the accused person and the deceased were told to identify their respective bags and they identified the four bags which had Tag Nos. FZ313221 and tag No. FZ313219 (Exhibit P4 A and B, respectively), a bag with tag No. FZ313222

(Exhibit P7) and a bag with tag No. FZ313220 (Exhibit P8). They also identified two hand bags which were carried on by them while moving from lounge to HBS (Exhibits P5 and P9) which had no tag numbers. That all six bags belonged to them. While at HBS, WP 3052 D/SGT Janeth (PW3) arrived there. PW3 took the accused person to the private place where she searched her body and when she returned, D/C Lucas took the late Imtiaz Shaikh to the said private place to search on his body. Both were found with nothing illegal on their bodies.

Thereafter, the accused person and the deceased together with their six bags were taken to KIA police station for further investigation since it was not possible to conduct search at the departure lounge being very small and there were too many passengers there. From airport to KIA Police Station, the accused person and the deceased with their bags together with PW2, PW3 and D/C Lucas boarded into the police vehicle while Kuruthumu, Kisusi and D/C Lucas boarded into another car.

At the police station, bags were unloaded from the car, the accused person, the deceased, PW2, PW3, PW9, Kuruthumu and D/C Lucas were taken in special room where PW2 conducted a search in all six bags and found powder like substance in their two bags; black in colour with grey stripes, logo Mawenzi and with tag No. FZ313219 in name Shaikh/DMRS and a bag, black

in colour with blue stripes, logo Mawenzi, with tag No. FZ313221 and in the name Shaikh/DMRS suspected to be narcotic drugs which were concealed in a black plastic like belt in each of the two bags. In a small hand bag with a word Protocol were found 27 bottles of tablets suspected to be narcotic drugs. Thereafter, in the presence of the accused person and the deceased, the belt with powder in a bag with tag No. FZ313219 was weighed 3.9 kilogram, the belt with powder in a bag with tag No. FZ313221 was weighed 3.9 kilograms. The 27 containers of pills weighed 1.3 Kilogram. After weighing, PW2 put the plastic belts in their respective bags.

PW2 seized two bags which had Tag No. FZ313219 with the name Shaikh/DMRS and a bag with Tag No. FZ313221 and name Shaikh/DMRS (exhibit P4A and B), a small hand bag in which 27 bottles were found (Exhibit P5) and all other items through a certificate of seizure (Exhibit P6) which signed by the accused person, the deceased, PW2 PW3, PW9 and other witnesses to the search and seizure.

Thereafter, two bags with powder suspected to be Narcotic Drugs, one bag with 27 bottles of pills and other properties seized from the accused and the deceased were handed over to PW6 on 29/06/2018 around 2.00am. PW6 recorded all Items in PF16 (Exhibit) on entry No. 4 of 2018 (Exhibit P22) and stored them. On the same date around 5.00 pm PW6, the accused and the

deceased were introduced to Franael Nanyaro (PW5) as a witness to the parking of exhibits by PW2. In the presence of PW5, the accused person and the deceased, PW6 removed items other than black plastic like belt from the black-blue bag with Tag No. FZ313221(Exhibit P4 A), packed it by wrapping with Khaki paper and sealed with red seal, with word "evidence" and also remove a tag on the said bag and labelled it 'A'. After sealing, the accused person and the deceased wrote their names and endorsed their thumb print. PW5 wrote his name and signed, as well as PW6 who signed, wrote his Force number and labelled the bag 'A' on it. He went on by removing items other than the black plastic like belt from the Black-grey bag with Tag No. FZ313219 (Exhibit P4 B), packed it by wrapping with Khaki paper and sealed it with red seal with words" evidence" and also remove a tag on the said bag and labelled it 'B'. After sealing the accused person and the deceased wrote their names and endorsed their thumb print. PW5 wrote his name and signed, PW6 also signed, wrote his Force number and labelled the bag 'B' on it. The third bag had the name protocol (Exhibit P5) containing 27 bottles of pills. He wrapped it with khaki paper and sealed it with red seal having the word "evidence". After sealing, the accused person and the deceased wrote their names and signed by thumb print. PW6 and PW5 also wrote their names and signed. He labelled the bag 'C'. After that PW6 took Exhibits P4 A and B together with Exhibit P5 to the exhibits room for safe custody.

On the 2nd day of July, 2018, PW6 with the escort took Exhibits P4 A and B together with Exhibit P5 to the Government Chemist Laboratory Authority (GCLA) in Dar es Salaam for analysis. Elias Mulima (PW1) received Exhibits P4 A and B and Exhibit P5 via Forensic Laboratory Submission Form (Exhibit P1). He weighing and conducted analysis (preliminary and confirmatory tests) to the samples taken from exhibits P4 'A', 'B' and P5 and the results revealed that the powder like substances found in the exhibit P4 A weighed 2428.74 grams and Exhibit P4 B weighed 2457.30 grams are narcotic drugs namely Heroin Hydrochloride (Exhibit P3) with total weight of 4,886.04 grams. Also, the tablets which were in the Exhibit P5 were confirmed to contain no narcotic drugs. After getting the results, PW1 prepared a report which was approved by David Elias, Acting Director of Forensic Science, and the Government Laboratory analyst Report was admitted as Exhibit P2.

On the 2nd day of July, 2018 PW1 handed over Exhibits P4 A & B, and P5 to PW6 who took them back to KIA police station for safe custody. The evidence reveals further that on the 5th day of July, 2018 the accused, the deceased and the seized properties including the Narcotic Drugs were taken to the Regional Crime Office Kilimanjaro, whereas, the accused person and the deceased and the properties were handed over to the Regional Crime Officer (RCO). On the process, the handing over certificate (Exhibit 21) was prepared. The accused person and the deceased acknowledged to the Exhibit P21 that

they were arrested with in connection with the trafficking of Narcotic Drugs (Exhibit P3) on 28th June 2018 at KIA. All the properties were handed over to H 3923 D/C Michael (PW7), exhibit keeper at Regional Crime Office Kilimanjaro and which were found in their possession. PW7 kept the said exhibits until the day he brought to the court for them to be tendered.

In her defence, the accused person (DW1) had the version that on 28th June, 2018 her husband (the deceased) told her that they were going to leave by freight at 03:00 hours. That her late husband had received a phone from Abubakari telling him that his friend Denis would bring them a gift. Later Abubakari phoned the deceased and asked for accused and deceased's room number in the Hotel, Crown Arusha. After 10 minutes one young man knocked the door, and the deceased opened. She said that she could not hear what the deceased and the young man talked since she was at balcony. DW1 went on testified that, the deceased told her that the gentlemen brought them different gifts in the suitcase from Abubakari. After the departure of Denis, the duo left for the Kilimanjaro International Airport (KIA). On arrival at KIA, they embarked from the car, DW1 took her big bag and a hand bag, Exhibit P8 and Exhibit P9 respectively. She stated further that when she entered the airport followed by deceased, it is when DW1 heard alarms on, their luggage was checked together. That they proceeded through security checks including immigration officers. According to her, the deceased took the accused's

passport and the boarding pass, that they were able checked in. Thereafter, they went to the waiting lounge with their food, but while they ate, a woman in blue gown accompanied by two men touched DW1 on her shoulder and asked DW1 to follow her because she needed to inspect DW1's bag. Since DW1 and the deceased had boarding passes, they expected their bags could be in the plane. DW1 together with the deceased were taken in one big room where they saw their bags including their personal bags. That they were asked to open them.

DW1 testified further that, they opened their bags, the first bag belonged to the deceased and had human medicine. DW1 opened her bag but they helped to put things out of the suitcase and found nothing. After that time, one officer took DW1 to another room where she started asking DW1 some questions about what she was doing in Tanzania and about drugs. DW1 replied that she did not know what the officer was saying because they were travelling to Dubai with her husband. The deceased too was taken to another room. In the search room, they left other people still searching while the accused and the deceased could not see each other.

The woman who was searched DW1 phoned her fellow and reported that DW1 had nothing. They took her watch, earrings and other things. She thereafter was informed to be under arrest for the offence related to drugs.

Thereafter DW1 and the deceased were taken in a truck to the police station by the police officers, they arrived at police station within five minutes. It was dark, about 21:00 hours or 22:00 hours. That At police stations all their bags were placed on the table which was at the center. She complained that there were a lot of people taking photo on them and their bags. They opened other bags but DW1's suitcase was not opened. That the gifts were brought in two bags, one bag was black in colour. That the deceased told PW2 that the two bags belonged to Abubakari and he showed an email. The conversation of email (Exhibit P14) between deceased and Abubakari can show what the two talked about. She said when the tags were being fixed to their bags, they did not see because officers of the airport do the job.

Having received the evidence from both the prosecution and the defence, as well as the submission by Counsels, it is now crystal clear that on the 28th June, 2018, DW1 and the deceased were travelling from Arusha to Bologna Italy via Dubai by Fly Dubai Airline. It is again a common ground that among the luggage they carried were the two bags with tags F.2231219 and F.2331322 (Exh P4A & B), both in the name Shaikh/DMRS (the accused) and in which the alleged narcotic drugs (Exh P3) were found. In this regard, I find three points for determination; ***one, whether the accused person was found trafficking in narcotic drugs. Two, whether the chain of custody of exhibit P3***

*was maintained. **Three**, whether the defence raised any reasonable doubt against the prosecution case.*

Before I dwell to determine the issues in this case, I find it pertinent to examine whether Exhibit P3 is narcotic drug namely Heroin Hydrochloride. Section 48A (2) of the Drugs Control and Enforcement Act, Cap 95 [R.E 2022] provided for that,

'Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by a Government Analyst shall be admissible as evidence of the facts stated therein without formal proof and such evidence shall, unless rebutted, be conclusive.'

The testimony of PW1 which was supported by his report, Exhibit P2, is on how he removed the cover (black plastic like belt) from exhibit P4 A and B, took out powder substances from the cover and put in two nylon packets in respect of Exhibit P4 A and B. He weighed the powder from Exhibit P4 A and got 2428.74 grams and the powder from Exhibit P4 B he got 2457.30 grams. After weighing, he conducted preliminary test by drawing small amount of powder from two packets as samples. He thereafter put them in white tiles and mixed each of them with Mecke reagent. The powder changed colour into dark green which is indication that the powder is narcotic drugs namely heroin Hydrochloride.

After that, he drew another sample for confirmatory test from each nylon packets and proceeded with confirmatory test by using machine. He took small sample and dissolved with Methane chemical for both A and B samples. After that, he took samples which he dissolved for analysis by using machine called Liquid Chromatography Mass Spectrometry. Before analysis, he checked the machine and confirmed that it was in a proper working condition by running quality control sample and blank sample in order to know if the machine was contaminated or not. Analysis of those samples by using that machine confirmed that the sample from exhibit P4 A and P4 B were narcotic drugs namely, Heroin hydrochloride weighed 4886.04 grams. He went on preparing the Examination report via Form DCEA 009 (Exhibit P2) on 4/7/2018, he signed it and later it was approved by the Acting Director of Forensic Science. Since there is no any reason to fault the findings made by PW1, and in the light of the above cited provision of law, I find it irresistibly conclusive to prove that Exhibit P3 is narcotic drug namely Heroine hydrochloride. Indeed, PW1 discharged his duty to assist the court to form its independent judgment as it well stated in the case of **Sylvester Stephano v. Republic**, Criminal Appeal No. 527 of 2016 CAT at Arusha (unreported).

Starting with the first issue, it is the evidence of the prosecution particularly PW2 that on the 28/06/2018, around night hours at Kilimanjaro International Airport (KIA) within Hai district, Dorotea Miranda Shaikh (accused

person) and Imtiaz Husain Shaikh (the deceased) were placed under arrest after being suspected and found trafficking in narcotic drugs namely heroine (Exhibit P3). That following the intelligence information he received, he went to KIA where he met PW9 and other two officers. With the assistance of officer of Fly Dubai airline, they manage to find the accused person and the deceased at KIA waiting lounge. Thereafter, they together went to HBS where PW4 asked PW8 to retrieve four bags (Exhibit P4 A and B, Exhibit P7 and P8) which belonged to the accused person and the deceased. PW8 retrieve the bags from the sorting area to HBS through a conveyer belt which was commanded to reverse. The accused person identified the said exhibits. Thereafter the accused persons together with the exhibits were taken to KIA police station accompanied by PW2, PW3 and PW9. At the Police Station the search in Exhibit P4A and B was conducted and Exhibit P3 was found within Exhibit P4 A and B, thus the same was seized through certificate of seizure (Exhibit P6) which was filled by PW2. The certificate of seizure was signed by PW2 himself, PW9, Kuruthumu Hamis, the deceased and accused person. The evidence of PW2 supported by the evidence of PW3, PW4, PW8 and PW9. Apart from that PW2, PW3 and PW9 successfully showed this Court the black plastic like belts which were alleged to contain powder substances revealed after being removed by PW2 after unscrewing the screws which used to tie them in Exhibit P4.

As stated herein above the accused person in her defence denied the two bags (Exhibit P4) not belong to her. That the said exhibit P4 used to carry them gift were from one Abubakar. She defended that the tags in Exhibit P19 and P20 which were on the exhibit P4, were put by someone else. That she entered at KIA with her bags (Exhibit P7 and P9) and the deceased was the one who checked in for her. She complained that at the time of searching on her and on the deceased, they were taken into different rooms and they could not see what transpired there but she signed exhibit P6 because all of their items listed were there. In this regard, I tirelessly and carefully revisited the prosecution evidence. It is very unfortunate that PW2, PW3 and PW9 were not cross examined on the issue of how search was conducted in the absence of the accused person and the deceased. It is a settled law that failure to cross-examine a witness on a relevant matter ordinarily connotes acceptance of reliability of the testimony. See the case of **Issa Hassan Uki v. Republic** (Criminal Appeal No. 129 of 2017) [2018] TZCA.

But again, in the case of **David Athanas@ Makasi and Joseph Masima@ Shandoo Vs the Republic, Criminal Appeal No. 168 of 2017, CAT** at Dodoma (unreported), the Court of Appeal held that,

'...the certificate of seizure ought to have been signed at the place where the search was conducted and in the presence of an independent witness...'

It is the evidence of prosecution witnesses PW2, PW3 and PW9 that search and seizure was not conducted at the place of arrest, however in the said evidence the prosecution stated the reason that at the HBS room the space was not enough for the search and there were a lot of people likely to interfere the whole exercise of search. I find it an exceptional circumstance in itself for the search to be conducted and the certificate of seizure to be signed on the place other than where the accused persons were arrested. I agree, the search was conducted in accordance and within the ambit and circumstance stated by PW2, PW3 and PW9 who was an independent witness to the search, fit in both sections 48(2)(c)(vii) of the DCEA and 38(3) of the CPA since the case is involving trafficking in narcotic drug. See the case of **Jibril Okash Ahmed v. Republic**, Criminal Appeal No. 331 of 2017 CAT at Arusha (unreported).

It is my view that, the accused having signed a certificate of seizure she acknowledged that narcotic drug namely Heroine Hydrochloride 4,886.04 grams was seized from her and the evidence of the accused that search was done in her absence is an afterthought. In the case **Song Lei v. The Director of Public Prosecution and Others** Consolidated Criminal Appeals No. 16 A of 2016 & 16 of 2017) TZCA at Mbeya (Unreported) the court of Appeal was on emphasis that, by signing the certificate of seizure, the accused person acknowledges to be found with the exhibit in question.

There is another important aspect in this case that there was no search warrant. In the instant case PW2 testified to the effect that he arrested the accused person and the deceased immediately after receiving information from the informant while he was on regular duties at KIA during night hours, and being the in-charge of criminal investigation of the KIA police station. Thus, there were no room for him to procure order or warrant to authorize him to conduct search and seizure of Exhibit P3. The law under section 42 (1) (a) (i) and (ii) and (2) of the CPA, Cap 20; Provides for that

"(1) A police officer may-

*(a) **search a person suspected by him to be carrying anything concerned with an offence; or***

(b) NA,

(i) if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence; and

*(ii) the **search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part.***

(2) A police officer who believes on reasonable grounds that, that person is carrying an offensive weapon or anything connected with an offence may stop that person and seize any such weapon or thing that is found on the person. (Emphasis is mine)

In light of the above cited provision of law, I find that the seriousness and urgency of the matter under the circumstance found a

way and was valid under the provision of section 42 (1) (a) (i) and (ii) and (2) of the CPA, Cap 20.

It is the submission of the defence Counsel that tags with numbers FZ 313219 and FZ 313221 both with name shaikh/DMRS admitted as Exhibit 19 and 20 respectively were not listed to be among of prosecution exhibits during preliminary hearing therefore the same were admitted mistakenly by this court. He went on to submit that prosecution failed to parade a crucial witness who is the officer of fly Dubai airline who could assist the court the meaning of the name in Exhibit P19 and P20 and which criteria led him to place the Exhibits P19 and P20 on the bags. He cited the case of **Omary Hussein@ Ludanga & Another vs. R, Cr. App. No 547 of 2017, CA @ Arusha (unreported)** to support his argument. While dealing with the issue at hand I again visited through the court records and I found that Exhibit P19 and P20 were listed as prosecution exhibits in this case as item 11 and 12. I think this question should not waste much of our time here. With due respect on the submission by the defence counsel, I find that his argument is a misplaced one. Another question raised by the defence counsel in his submission is on the failure by the prosecution side to call an officer from Fly Dubai as witness. As noted earlier, there is no dispute that names in Exhibits P19 and P20 are of the accused person and placing tags on a passenger's bags is the task of airlines' officer with the directive of the owner or possessor of the respective bag. In her

evidence, DW1 said that the bags (Exhibit P4) containing Exhibit P3 were handed over to the deceased as a gift to them. In his evidence, PW8 testified that Exhibit P19 and P20 has name "Shaikh, D, Mrs". In my considered view, PW2, PW3, PW4, PW8 and PW9 were material witnesses to the arrest of the accused person, search, seizure, and on their well-connected evidence to link the accused person with Exh.P4. In this issue the prosecution side had discharged their duty, and by then it had shifted on the defence side as per section 28(1) of the Drug Control and Enforcement Act, Cap 95 R.E 2022. Even if the tags were placed in bags by directives of the deceased but this must have been done in the knowledge of the accused person who was arrested in the course of the journey together with the deceased. A careful study of the defence case and the prosecution case reveal that the accused and the deceased had agreed and had a common understanding of their journey. But again, the Accused in her evidence said that they were travelling from Winston, America to Bologna, Italy via Netherland, Tanzania and Dubai. The route leaves much to be desired. One can wonder on such illogical and unbecoming flight plan or arrangement. But again, according to DW1, they stayed in Arusha, Tanzania for two days. Was it just enroute to another destination or a planned stay in Arusha? In Arusha before they headed to KIA, they received the so-called gift from Abubakari (Exh.P4) which carried narcotic drugs (Exh.P3). Was it a coincidence or a designed incidence? I think, looking at the evidence from

both sides and the series of events, I find it to be a pre meditated one which the accused person cannot distance herself or disown the plan and knowledge of trafficking in narcotic drugs. Therefore, with the findings above it is my opinion that the first issue is affirmatively answered.

Coming to the second issue, the prosecution evidence established that the Exhibit P3 was retrieved from exhibit P4 A and B (exhibit P4) by PW1 and the seized exhibit P4 at the scene of incident by PW2 on 29th June 2018 through certificate of seizure exhibit P6. On the same date PW2 handed over to PW6, after receiving exhibit P4, PW6 recorded it on entry No. 4 of 2018 in the Exhibit Register (Exhibit P22) at KIA and keep it in the exhibit room till the evening hours of the same date when he packed the said Exhibit P4 ready to be transmitted to Chief Government Chemist. In a packing exercise PW6 with the presence of PW5 and the accused person removed various items including drum, baskets, wall pictures, sunhat and various clothes (Exhibit P17) and tags exhibits P19 and P20 from Exhibit P4 A and B (Exhibit P4). Thereafter he packed exhibit P4 by wrapping with Khaki paper, sealed with the red seal with word evidence. After sealing the accused person wrote her name and append her thumb print. PW5 and PW6 also wrote their names and signed. PW6 labelled exhibit P4 A and B with letters 'A' and 'B'. He also labelled exhibit P19 and 20 with 'A' and 'B' respectively in relation to Exhibit P4. After packing and

libelling exhibit P4, P19 and P20 he stores the same in exhibit room till 2nd of July 2018.

The prosecution evidence reveal further that on 2nd July 2018 PW6 transmitted Exhibit P4 to the Government Chemist Laboratory Authority (GCLA), on arrival he handed over Exhibit P4 to PW1 who received it by signing on Exhibit P1. After receiving exhibit P4, he registered with Laboratory No. 1878 of 2018, thereafter he took exhibit P4 to laboratory where he removed a Khaki papers with latter A and B, removed the black Belts surrounding the bags, removed the powder exhibit P3 from the belts weigh, put in two nylon packets, and conduct analysis thereafter put Exhibit P3 into its respective bags Exhibit P4. PW5 testified that after putting exhibit P3 into Exhibit P4 he wrapped exhibit P4 and handed over the exhibits P3 and P4 to PW6.

PW6 went on stating that after being handed over exhibit P3 and P4 he travelled back to KIA, after arrival at KIA he registered the exhibit P4 which carries Exhibit P3 in the Exhibit P22 and store the same in exhibit room till 5th July 2018. PW6 went on stating that, on 5th July 2018 he transmitted exhibit P4 within which carries Exhibit P3 to RCO office where he handed over to Exhibit keeper (PW7) through the handing over certificate (Exhibit P21). After receiving exhibit P3 within contained in exhibit P4, PW7 registered the same and store in exhibit room (strong room) till on 19th May 2022 when he brought

the exhibit P3 and P4 together for the purpose of being tendered to the court. And on the said date PW1 tendered Exhibit P3 to the court.

In the case of **Paulo Maduka & 4 Others Vs the Republic**, Criminal Appeal No. 110 of 2007, CAT at Dodoma (Unreported), in which the principle was emphasized on the Chronological documentation of exhibit from the time of seizure to the time the same is tendered before the court. However, the principle developed and now oral evidence can be accepted by the court in proving the integrity of chain of custody. This is when the court finds all witnesses on the matter to be credible witnesses and the circumstance showing that there is no possibility at any point the exhibit in question has been tampered with. In the Case of **Abdallah Rajabu Mwalimu vs. Republic**, criminal Appeal No. 367 of 2017(Unreported), Court of Appeal at Dar es Salaam. The court of Appeal stated that;

*'.....as rightly submitted by Ms. Mkunde, even in the absence of paper documentation on how the pellets were handled from the time of arrest until when they were tendered in court, the oral evidence of witnesses who described how the pellets were handled from arrest to the time the same were tendered in court was sufficient proof. We reiterate the position we stated in our decision in **Kadiria Kimaro** {supra} concerning the importance of oral evidence in explaining the chain of custody depending on the circumstances like the one obtaining in this case.'*

Also, in the case of **Abas Kondo Gede Vs Republic**, Criminal Appeal No. 472 of 2017 (Unreported) Court of Appeal at Dar es Salaam. The court of Appeal stated that;

*'It is also noted that the desirable method of establishing the chain of custody is documentation of the chronology of events in the handling of exhibit from seizure, control, transfer until tendering in court at the trial as stated in **Paulo Maduka and 4 Others** (supra) which was followed in other decisions...'*

The court of Appeal went on stating that;

'However.....documentation will not always be the only requirement in dealing with exhibits. Thus, the authenticity of exhibit and its handling will not fail the test merely because there was no documentation. It follows that depending on the circumstances of every particular case, especially where the tempering of exhibits is not easy oral evidence will be taken to be credible in establishing the chain of custody concerning the handling of exhibits.'

In the instant case prosecution paraded four witnesses PW1, PW2, PW3, PW5, PW6, and PW7 and three documentary exhibits that is Exhibits P1, P6, P18, P21, 22 and Exhibit P23 in establishing integrity of chain of custody of exhibit P3 and P4. In my considered opinion the said witnesses are credible witnesses. It is my considered view that the prosecution through both oral and documentary evidence managed to prove that chain of custody of Exhibit P3 was not broken, therefore the second issue is answered positively.

Reverting to the third issue, it is the evidence of DW1 that on the material date at 03:00 hours, her husband (deceased) received a phone from Abubakar telling him that his friend Denis would bring a gift to them (DW and the deceased). Sometimes later one young man (Denis) knocked the door, and deceased opened, talked to him and Denis left. According to her, the deceased told her that the gentlemen brought them different gifts (Exhibit P17) from Abubakar. That the gifts were brought in two bags (Exhibit P4). Thereafter, her and deceased went to KIA, while entering DW1 took her big bag and a hand bag, Exhibit P8 and Exhibit P9 respectively.

She stated further that when she entered the airport followed by deceased, it is when DW1 heard alarms on, their luggage were checked together. And they proceeded through security checks including immigration officers. The deceased told her that Abubakar arranged for their trip and prepared air tickets for them. That the two bags (exhibit P4) belonged to Abubakar. According to DW1, the deceased is the one who planned the trip from Texas via Netherland to Tanzania as well as from Tanzania to Dubai. That from the beginning of their journey the deceased did everything on their trip, including to obtain air tickets and check in.

The defense Counsel submitted attacking that the CD rom from CCTV, that the prosecution failed to produce footage showing the occurrence of

events at the airport as evidence before this court. And that the testimony of PW9 contravenes the general information about the availability of the CCTV surveillance system at the airport. He cited the case of **R v. Idd s/o Chumu & another, Cr. Sess. Case No. 30 of 2017, HC @ Moshi (unreported)** at page 7, in a bid to show that in 2013 there was CCTV system. In that regard he prayed this court to draw adverse inference against the prosecution. He went on to state that the charge is defective for failure to state what was done in a particular of the offence. He referred this court to the case of **Hamis Mohamed Mtou v. R, Cr. App. No. 228 of 2019, CAT @ Dar-es-Salaam (unreported)**.

It is the submission of prosecution Counsel that the defence side failed to raise reasonable doubt in the prosecution case rather they created an afterthought taking advantage of the deceased whose case was abated forgetting that exhibit P19 and P20 together with the remaining bags have tags with accused person's name. That it has to be noted that it is not a CCTV camera which can prove the ownership of the bags. That DW1 was found in possession and the tags indicate that she is the one who possessed those bags. She reminded this court to take note that it is not allowed to check in with the bags which are not yours as stated by PW9.

Sincerely, I have very carefully and dutifully considered the evidences and submissions from both sides. To a great extent, this issue was dealt in issue number one. It is in the record that DW1 in her defence did not deny that Exhibit P4 was found in their possession. However, she raised a defence that the said exhibit was carried by the deceased who, when entering airport, she heard an alarm on and also when the same was searched she did not witness. In the case of **Martin Masara vs. The Republic**, Criminal Appeal No. 428 of 2016, CAT at Mbeya (unreported), it was held that,

'It is trite law in this jurisdiction founded upon prudence that failure to cross-examine on a vital point, ordinarily implies the acceptance of the truth of the witness evidence; and any alarm to the contrary is taken as an afterthought if raised thereafter.'

In the instant case, during testimony of PW2, PW3 and PW9, the defence did not cross examine on the following matters, **one**, alarm rang when the deceased entered the airport with Exhibit P4 and **two**, that search was conducted with the absence of accused person. In that regard it is my considered view that, this piece of evidence is an afterthought.

It is true that in the case of **R v. Idd s/o Chumu & Another** (Supra) cited by defence Counsel at page seven of typed judgment discussed about the presence of CCTV Camera at KIA. However, in the case at hand the CCTV Camera cannot be crucial evidence to prove or disprove fact in issue, evidence of PW2, PW3 and PW4 prove that the accused was in possession of Exhibit P4.

In the testimony of the accused person, she too testified to the effect that exhibit P4 was brought to them by one Denis. I agree with the learned State Attorney that exhibit P19 and P20 being tags which were put in Exhibit P4 had accused's name and that it is not a CCTV camera which can prove the owner of the bags. In the case of **Song Lei** (supra) the court of Appeal had this to say;

*"In a criminal trial, in order to establish knowledge on the part of the accused person in respect of possession of unlawful items the Court in the case of **Moses Charles Deo vs Republic** , (supra) which was cited to us by Mr. Mkumbe the Court categorically stated that: " for a person to be found to have had 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 presence, at his invitation and arrangement"*

In the instant case it is clear from evidence that, the accused person was aware of the Exhibit P4. Tags (Exhibit P19 and 20) which had accused person's name show that the accused person had control over exhibit P4 which inside the exhibit P3 was concealed. Along the same vein, I agree with the submission by the learned state Attorney that as stated by PW9 one cannot check in with the bags of another person and the luggage tag should list the owner's name.

The Court of Appeal went on in the said case of **Song Lei** (Supra) by stating that '*Similarly, in the case of **NURDIN AKASHA alias HABAB VS***

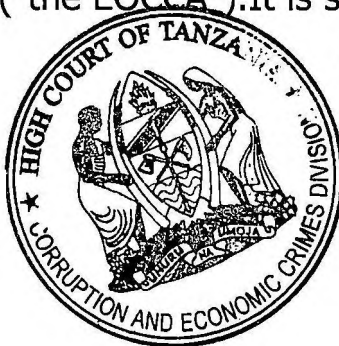
REPUBLIC, 1995 TLR, 227 the appellant was charged with among others, unlawful possession of dangerous drugs which were stuffed in two motor vehicle tyres kept in a room used as a store in the appellant's premises. The Court among other things held: "Whether the drugs were hidden in the store by the appellant himself or by another person with the appellant's approval, the appellant was in possession of those drugs.'

In the case at hand, Exhibit P4 cannot belong to Abubakar since it was already given to them (accused person and the deceased). Therefore, if exhibit P3 was hidden into exhibit P4 by Abubakar or deceased it became into the possession and control of the accused person and the deceased immediately after being received from one Denis. Receiving, taking the same to airport and the tags being placed for her name are full proof of the accused's knowledge and approval over trafficking Exhibit P3 which was hidden in Exhibit P4. See also the case of **Yanga Omari Yanga vs. Republic**, criminal Appeal No 132 of 2021, CAT at Tanga.

As to the argument that the charge is defective for failure to state what was done in a particular of offence, I hasten to say that this argument by learned Counsel for defence is misconceived. The information discloses that the accused was found trafficking in narcotic drug namely Heroine Hydrochloride. Since the prosecution evidence show that the accused person was found in possession of the drugs in question in the course of conveying from one point to another (Tanzania to Dubai), this act amount to trafficking

according to section 2 of the Drugs Control and Enforcement Act, Cap 95. The case **Hamis Mohamed Mtou** (supra) is distinguishable since in the said case there was no evidence by the prosecution which show the type of trafficking while in the case at hand the prosecution evidence reveal that the accused was in possession of exhibit P3 and she was travelling from Tanzania to Dubai. Having found that, it is my considered opinion that the defence evidence did not raise any reasonable doubt against the prosecution case.

In the final analysis, I am satisfied that the prosecution side has proved its case on the hilt. I therefore find the accused person one Dorotea Miranda Shaikh guilty and I hereby convict her with the offence of trafficking in narcotic drugs contrary to section 15 (1) (a) of the Drug Control and Enforcement Act, No. 5 of 2015 ("the Drugs Act), as amended by Act No. 15 of 2017, read together with Paragraph 23 of the First Schedule to, and section 57 (1) and 60(2) of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2002], as amended ("the EOCCA"). It is so ordered.



G.N. Isaya
Judge
30.11.2022

Judgment delivered in the open court this 30th day of November, 2022 in the presence of the accused person, Ms. Tully Helela, State Attorney, Mr.

Emmanuel Antony, Advocate for the accused person and Hon. Chilemba Chikawe (JLA), B/C Venance Kimaro Right of Appeal fully explained.



G.N. Isaya
Judge
30.11.2022

SENTENCE

I have carefully considered accused person's mitigation and the submission of the State Attorney. In this regard, I am guided by the relevant legislations, the Drugs Control and Enforcement Act, Act No. 15 of 2015 as Amended by Act No. 15 of 2017, the EOCCA and the sentencing Manual for Judicial Officers which provide for minimum sentence of 20 years toward 30 years as maximum penalty for a convict of an offence under section 15 (1) (a) of the DCEA, Cap 95.

I have considered that the accused, is the first offender but also the gravity of the offence. I agree that narcotic drugs pose a greater danger to the society of the world both on the health of people and economically. I therefore sentence the accused person to serve thirty (30) years in jail.


It is so ordered.



G. N. Isaya
Judge
30/11/2022

Right of Appeal fully explained.





G. N. Isaya
Judge
30/11/2022

ORDER

- (i) Exhibits P3, P4 and P17 be destroyed in accordance with the Drugs and Enforcement Act, [Cap. 95 R.E 2022] with its Regulations.
- (ii) Since Exhibits P5, P7, P8, P9, P10, P11, P12, P13, P15 and P16 are personal belonging of the accused person and the deceased let them be returned to the convict.

Order accordingly




G. N. Isaya
Judge
30/11/2022