

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

AT MOSHI SUB-REGISTRY

ECONOMIC CASE NO. 7 OF 2022

THE REPUBLIC

VERSUS

1. DENIS ROBERT UROKI

2. ANNA NDASIWA UROKI

3. MUSSA BAKARI TEMBA

JUDGMENT

ISAYA, J.:

The accused persons, Denis Robert Uroki, Anna Ndasiwa Uroki and Mussa Bakari Temba being the first, second and third accused persons respectively stand charged with the offence of Trafficking in Narcotic Drugs contrary to section 15(1) (a)(3) (iii) of the Drugs Control and Enforcement Act (Cap 95 R.E 2019) read together with paragraph 23 of the First Schedule to and section 57(1) and 60 (2) of the Organized Crime Control Act (Cap 200 R.E 2019)

It is alleged that, on the 17th day of October, 2020 at Chilio area – Holili Village within Rombo District in Kilimanjaro Region, the accused persons were found trafficking in 351.0 kilograms of narcotic drugs namely Cannabis Sativa commonly known as *Banghi*.

The accused persons pleaded not guilty to the offence. In the bid to establish the case against the accused persons, the prosecution side through Ms. Tully Helela, learned State Attorney called in seven (7) witnesses to testify, namely, Michael Saire Bernard (PW1), Baraka Sospeter Kabululu, (PW2), PF.20117 Insp. Daniel Mapunda (PW3), A/Insp. Francisco Baleke (PW4), E6980 D/Sgt Alfred (PW5), G.2392 D/CPL Isaack, (PW6) and Fadhili Buzebuze, (PW7). They also tendered nine (9) exhibits, which were admitted in the following order: Exhibit P1, Government Chemist Analyst Report (DCEA 009); Exhibit P2, Sample Receipt Notification (GCLA 01); Exhibit P3, inventory form (DCEA 006); Exhibit P4, certificate of destruction; Exhibit P5, certificate of seizure (DCEA 003); Exhibit P6, handing over certificate; Exhibit P7, Motor vehicle with Registration No. 175 AMX, Toyota Land Cruiser; Exhibit P8, handing over certificate between G. 4068 D/C Francisco and E.6980 D/CPL Alfred (storekeeper) and Exhibit P9, Sample submission form (DCEA 001). On the other hand, the accused persons under representation of Mr. Patrick Paul, Miss Edina Solomon and Angel Mongi, Learned Counsels for the first, second and third accused respectively testified themselves under oath as DW1, DW2 and DW3 respectively. They however did not tender any exhibit.

Briefly, the body of evidence by the prosecution side presented a case that, on 17/10/2020, PW3 and some police officers D/CPL Paul, DC Peter, WP Beatrice, PC Ezekiel and others at about 03.00 hours while in the Patrol at

Chilio village they saw a motor vehicle heading to their direction. They signalled the said motor vehicle (Exhibit P7) to stop. It stopped and therein were two persons; the first and the second accused persons. That the Police officers as they interrogated the driver as to their destination, they smelt a scent of bhang in the vehicle. They ordered the driver to open the rear door of the vehicle where they saw the bags in the vehicle. In the quest to know what was contained in the bags, PW3 made a small hole and saw leaves suspected to be narcotic drugs namely cannabis sativa commonly known as '*Bhangi*'. He called PW7, the Ward Executive Officer for Holili Ward as an independent witness. PW7 came at the scene of crime. While they were still there, the third accused person went there and started to beseech with the police to settle with the accused persons for their release. It was a very big mistake in front the cops! He was arrested too and joined with the two. Thereafter, they took all the three accused persons to Holili Police station where PW3 conducted search and seized the leaves alleged to be cannabis sativa within seven sulphate bags (four bags were green and three bags were white in colour) and Exhibit P7 (Vehicle with registration No. T175 AMX, Land cruiser). They weighed the said narcotic drugs and got a total of 373 Kg. PW3 filled Exhibit P5 (certificate of seizure-DCEA 003) which was signed by himself, PW7, first and second accused person. Thereafter PW3 handed over exhibits and accused persons to PW4 who took the same to Mkuu Rombo

Police Station and handed over to PW5 for safe custody. On 23/10/2020 PW1, the Government chemist, went to Mkuu Rombo Police Station where he met PW6 who handed over to him a letter and Exhibit P9. Thereafter PW6 took PW1 to the store where he was handed over with the seven sulphate bags containing dry leaves alleged to be bhang. PW1 weighed the leaves from the seven sulphate bags and got a total of 351.01kg. He then collected 14 samples, two from each sulphate bag and put in envelopes. The sample weighed 499.25 gram. On 27/10/2020 PW1 conducted preliminary and confirmatory to the samples and the report (Exhibit P1) reveals that the dry leaves from the seven sulphate bags are narcotic drugs namely Cannabis Sativa.

On 10/03/2022 PW5 D/sgt Alfred handed over the exhibits, seven sulphate bags to PW4 A/Insp. Baleke who took the same to PW2 Baraka Kabululu (Resident Magistrate at Rombo District Court) who made the order of destruction of the exhibit via Exhibit P3(Inventory form-DCEA 006). Thereafter the destruction exercise was done, PW2, PW4 and other officers who witnessed the destruction exercise signed on Exhibit P4 to acknowledge its execution.

At the closure of prosecution case, the accused persons were found with a case to answer in respect of the offence charged with. The accused

persons throughout their case firmly denied to have been found trafficking in narcotic drugs in question. The first and second accused persons denied to have been arrested on the 17th October, 2020 while the 3rd accused person doesn't deny to be arrested on the 17th October 2020 but he claimed to be arrested at Police station while he went there to see his relative who was arrested with kerosene and not at the place stated by PW3 and PW7.

Largely, the version of DW1 and DW2 was that, on the 16th October 2020 the first and the second accused persons were travelling by using Exhibit P7 from Arusha to Mwika for the purpose of visiting their patient, one Simon Kyara. When they reached Moshi cement area, they went through a murram road to Mwika at around 22:00 hours. Ahead of them they saw a vehicle red in colour, make corona coming with full right. The first and the second accused persons stopped since they were blocked ahead by the said red vehicle. Thereafter three persons disembarked from a red vehicle and two persons came from behind exhibit P7 while armed.

Thereafter the first and the second accused persons were taken in a small vehicle to Holili Police Station while exhibit P7 taken by two persons among those five and drove it to unknown place. At 05:00 hours, the first and the second accused persons saw their vehicle Land Cruiser with Reg.

T.175 AMX (Exhibit P7) coming while they are at reception. They were taken photos together with the Exhibit P7 and then taken to the lock up.

That on 17/10/2020 at 08:30 hours the first and the second accused persons were taken outside the lockup where they saw the consignment in the sulphate bags which the police officers said it belonged to them. They defended that it was a time when they saw PW7 and PW3 who forced them to sign in the documents. The third accused person testimony was to the effect that, on 17th October 2020, about 08:30 hours morning he went to Holili Police station after being called by the relative and told that he was arrested with Kerosine. While there he tried to know what is going between the first and the second accused persons. That he was joined to the case, taken to the lockup and later on in the said day they and were taken to Rombo Police station and charged with the offence of trafficking in narcotic drug.

Having gone through the evidence from both the prosecution and defence sides, it is now crystal clear that the first and the second accused persons were travelling from Arusha by a vehicle with registration number T.175 AMX, make Toyota Land Cruiser. The first accused is the son of the second accused and was driving the said vehicle on the day in question. It is a common ground that PW3 and his fellow police officers were on patrol when

they stopped the vehicle at Chilio village, Holili area. That the third accused came to plead with the police later when the two had been arrested for the settlement of their case and was not travelling in the vehicle. As the prosecution has endeavoured to prove that the accused person committed the offence charged while the accused persons have consistently claimed their innocence, I find four issues for determination in this case, **one**, *whether leaves contained in seven sulphate bags were narcotic drugs; Two*, *whether leaves contained in the seven sulphate bags were retrieved from the motor vehicle with registration number T.175 AMX make Toyota Land Cruiser; Three* *whether on the material night the three accused persons were arrested in the course of trafficking in narcotic drugs; and Four*, *whether the chain of custody was maintained.*

Starting with the first issue, according to the prosecution evidence particularly PW1, a chemist at the Government Chemist Laboratory Authority, Northern Zone Arusha in his testimony he stated that, on 23/10/2020 by using his office vehicle he went to the police station Rombo District to collect samples after being assigned a task by the Zonal Manager one Christopher Augustino. He took with him the required instrument for collecting samples, weigh machine, personal protective equipment and envelope for carrying the samples. At his arrival he met PW6 who gave PW1 a letter from the OCCID and a DCEA 001 form. PW1 studies the documents, thereafter he was taken

to the exhibit store where PW1 was handed over with seven bags which were sealed with police seal and labelled with the case Registration No. MKR/IR/1148/2020, and also labelled A, B, C, D, E, F, and G sequentially in which there were dry leaves suspected to be *bhang*. He registered them with No. NZL 771/2020.

He started by weighing the leaves from the seven sulphate bags. He got a total of 351.01kg. He collected two samples from each sulphate bag and put into 14 envelopes, then he labelled the envelopes by writing NZL771/2020 and A, B, C, D, E, F and G in accordance with where the samples were taken. The samples weighed 499.25 grams. Thereafter he filled Exhibit P2 and signed on Exhibit P9 (sample submission form) and left for Arusha where he kept the samples in the sample room until 27th October 2020 when he conducted analysis on the said samples. According to him he started with preliminary test of the samples by using aqueous Levine test method in which he took a small amount from the sample and put it in the test tube. He added a chemical called Aquino's reagent, thereafter he added concentrated hydrochloric acid and then added chloroform. The samples changed to purple colour. That the Purple colour indicates that there is a chemical called Tetrahydrocannabinol (THC) which is found in *cannabis sativa* plant.

Thereafter he continued with confirmatory test whereas he took some little samples and inserted in the microscope and observed two parts; the upper part of the leave and lower part of the leave. He observed and saw a structure namely cystolithic trichomes layer. It resembles the bear claw shape on the upper part of the leave. At the lower part he saw sessile. These structures cannot be found in any other leave than cannabis sativa. He concluded that all samples on 14 envelopes were tested and confirmed to be narcotic drugs cannabis sativa commonly known as *bhanghi*. He then prepared the analysis report (Exhibit P1), signed it and forwarded it to the zonal manager Arusha for confirmation. In the case of **Sylvester Stephano v. Republic**, Criminal Appeal No. 527 of 2016 CAT at Arusha (unreported), it was stated that,

'.....that the duty of an expert is to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the court to form its own independent judgment by application of these criteria to the facts proven in evidence.'

In the instant case PW1, a Government Analyst is an expert who discharged his duty to testify on how he conducted analysis to the samples in order to prove that the leaves are narcotic drugs known as '*Bhanghi*'. There is no any other evidence which shade a doubt on his findings. Section 48A

(2) of the Drugs Control and Enforcement Act, [Cap 95 R.E 2019], provides 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.'

From the finding above, I hold that the findings made by PW1 supported by Exhibit P1 are conclusive evidence that leaves contained in seven sulphate bags were narcotic drugs namely cannabis sativa "*Bhangi*" weighed 351.01 kg.

I will determine the second and the third issue jointly. The prosecution evidence shows that, on 17/10/2020, the night of incident at about 03.00 hours, while PW3 and other police officers were in patrol at Chilio area within Holili apprehended the motor vehicle with registration number T175 AMX make Toyota Land Cruiser with a berg colour (Exhibit P7). Inside the vehicle were the two accused persons (first and second accused) together with seven sulphate bags contained dry leaves which later came to be identified as '*bhangi*'. PW3 called PW7 who turned up within a very short time. On his arrival, PW3 informed him what transpired. That while they were still there, the third accused person emerged at the scene of crime. According to PW3, the 3rd accused person was pleading for assistance of the accused and that

the first accused person told PW3 that the third accused person is the one who came to receive the said '*bhangji*'. All the three accused persons were arrested. Then all the three accused persons, Exhibit P7(motor vehicle) and '*bhangji*' were taken to Holili Police Station where PW3 conducted search on Exhibit P7 and retrieve seven sulphate bags containing '*Bhangji*'. He seized the said '*bhangji*' and exhibit P7 through Exhibit P5 (certificate of seizure). He listed items seized in Exhibit P5 which was signed by PW3 himself, PW7 (independent witness), and the first and the second accused persons. PW3 stated that circumstance and place at Chilio village was not conducive to conduct search that is the reason he conducted search at Holili police station

On the other hand, all accused persons denied to be arrested on the place claimed by prosecution witness, thus relied on the defence of *alibi*. However, their *alibi* was in contravention of the law because according to section 42 (1) (2) of the EOCCA, the accused persons ought to have notified the Court their intention to rely on *alibi* as their defence during the preliminary hearing and to furnish the prosecution with the particulars of their *alibi* before the closure of prosecution case as required by law but they did not do either of the two. Both accused persons were duly represented by learned Advocates who were conversant with the procedure of notifying the Court to that effect, thus their alibi was not honest rather than afterthought.

Besides, during hearing of the prosecution case, PW3 and PW7 who claimed to be at the scene of crime were not asked questions concerning where and when the accused persons were arrested were not asked by their counsels. PW3 and PW7 were not asked question about the first and the second accused persons to be arrested on 16th October 2020 and at 22:00 hours Moshi Cement area. PW3 and PW7 were not cross-examined on the alleged third accused person's arrest at Police station and not at Chilio village. They too failed to cross-examine them on their alleged fact that Exhibit P7 was taken to unknown place until the morning hours. The defence side did not cross-examine the prosecution witnesses on such important areas. The Court of appeal in the case of **Martin Masara vs. The Republic**, Criminal Appeal No. 428 of 2016, CAT at Mbeya (unreported), 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 case at hand the accused persons through their Advocates failed to cross-examine PW3 and PW7 on the essential matters, this implies the acceptance of the truth of the witness evidence; and evidence to the contrary raised by accused persons is deemed to be an afterthought.

Again, in their defence, DW1 and DW2 alleged that they were forced to sign documents. This also is regarded as an afterthought since the same was not asked to PW3 and PW7. But again, there was no any dispute that the Exhibit P5 was not signed by first and second accused persons immediately after the search and seizure of Exhibit P7. When the accused person signs a valid certificate of seizure, he acknowledges to be found with the exhibit in question. See 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). In the case at hand Exhibit P7 is valid in the eyes of law because it was signed by the first and the second accused persons.

In the course of prosecution evidence particularly PW3 and PW7, showing that the third accused person was arrested after being mentioned by the first accused that is the person who came to receive the consignment (seven sulphate bags contained *bhang*), also that he pleaded with the police officers to release the first and the second accused persons as a result of his arrest. On the other hand, the third accused relied on his weak and unreliable *alibi* defence. According to section 2 of the DCEA, the Act defines trafficking to mean the importation, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance. In the case at hand there is no any act stated by the prosecution to be done by the third accused

person fall under the above definition of trafficking under the DCEA. The accused person can only be convicted on the strength of the prosecution case and not on the basis of the weakness of his defence as stated in the case of **Mohamed Haruna @ Mtupeni v. Republic**, Criminal Appeal No. 25 of 2007 Court of Appeal (unreported). There is nothing adduced by the prosecution side which involve the third accused person in the commission of the offence of trafficking in narcotic drugs. I think I have shown above the strength of the prosecution case to prove that the dry leaves contained in the seven sulphate bags were retrieved from Exh. P7 and if the the three accused persons were trafficking in narcotic drugs. From the findings above I am of the firm view that the second issue is answered in the positive while the third issue is answered partly positive and partly negative.

Coming now to the fourth issue, it is the prosecution evidence, particularly PW3, that after the arrest he took the accused persons to Holili Police Station. One Paul drove the Exhibit P7. That he conducted search and seized exhibit P7 and seven sulphate bags containing narcotic drugs '*bhang'i*' through Exhibit P5 at Holili police station. He signed in the certificate of seizure himself, PW7 (independent witness), the first and the second accused persons. He thereafter handed over both of the three accused persons and items listed in Exhibit P5 to PW4. That he handed over the exhibits on the same date 17th October 2020 through the handing over certificate (Exhibit

P6). PW4 in his testimony stated that he went to Holili Police station from Rombo Police station, on his arrival he was handed over Exhibit P7 and the seven sulphate bags by PW3 by listing the said items in Exhibit P6 which was signed by PW3, PW4 himself, the first and the second accused persons. Thereafter PW4, the accused persons and other officers accompanied by him left to Mkuu Rombo Police station. The accused persons were in police vehicle and one D/CPL Msafiri drove exhibit P7 behind the police car.

PW4 went on stating that on arrival at Mkuu Rombo Police station he sealed the exhibits (seven sulphate bags) with a police seal and labelled the seven bags with A, B, C, D, E, F and G in the sequence. Thereafter he handed over exhibit P7 and the seven sulphate bags with dry leave '*bhangi*' to PW5 through a handing over certificate (Exhibit P8) which was signed by PW4, PW5, the first and the second accused persons. It is the testimony of PW5 that after being handed over with the said Exhibits he registered the same in the Exhibits Register (PF16) with entry No 38/2020 and case No. MKR/IR/1148/2020 which he gave to the exhibits. After that he stored them for the safe custody. That PW5 stored the seven sulphate bags until 23rd October 2020 and stored Exhibit P7 until 28th November 2022 when he brought the same to the court to be tendered as exhibit in court.

According to the testimonies of PW1, PW5 and PW6 on the material date PW1 arrived at Mkuu Rombo Police Station who met PW6. PW6 gave PW1 a letter from the OCCID and a DCEA 001 form. PW1 studies the documents, thereafter he was taken to the exhibit room by PW6 where they met PW5. PW6 introduced PW1 to PW5 that he was a Government Chemist went there for the purpose of weighing leaves in sulphate bags and to take samples for the laboratory analysis. PW1 was handed over with seven bags which were sealed with police seal with case Registration No. MKR/IR/1148/2020, and also labelled A, B, C, D, E, F, and G in which there were dry leaves suspected to be *bhanghi*. He registered them with No. NZL 771/2020. In the exhibit room PW1, started by weighing the leaves from seven sulphate bags, got a total of 351.01kg. He collected two samples from each sulphate bag and put into 14 envelopes. He thereafter labelled the envelopes by writing NZL771/2020 and A, B, C, D, E, F and G in accordance with where the samples taken. Thereafter he filled in Exhibit P3 and signed on Exhibit P9 and left for Arusha. Thereafter, PW5 closed the door of exhibit room.

It is again the evidence of PW4 and PW5 that, on 10/03/2022 PW4 went to take seven sulphate bags containing '*bhanghi*' for the purpose of taking the same to the court for the destruction process. PW5 after consultation with OCCID he handed over the seven sulphate bags containing

'*bhangi*' to PW4. PW4 wrote the inventory form (Exhibit P3) in which he listed the seven sulphate bags containing '*bhangi*' (the exhibit). The inventory was signed by PW4 and accused persons for the purpose of seeking permission for destruction. PW4 took the said exhibit and accused persons by using a Police vehicle to the Rombo District Court. The District Resident Magistrate (PW2) inspected the exhibit in respect to what was written in the Exhibit P3, confirmed and made an order for the destruction of the exhibit. He then went to witness the said destruction of the said seven sulphate bags containing dry leaves '*bhangi*'.

Thereafter PW2 went together with PW4, the accused persons, an officer from PCCB, an officer from TISS and an officer from NPS and State Attorneys to Rombo Delta. The seven sulphate bags were off loaded from the vehicle at the said place and destructed by fire. The Kerosene was poured on the seven bags and the fire was started. All the seven bags containing the dry leaves were completely consumed by fire. After that PW2 filled in the certificate of destruction (Exhibit P4), he signed and all who witnessed the destruction signed including all the accused persons.

The importance of the integrity of chain of custody of exhibits is the assurance of their reliability. It is there to show the movement of exhibit from one person to the other until the same is tendered to the court. The

landmark case on the principle of chain of custody is the case **Paul Maduka and 4 others v. Republic**, Criminal Appeal No. 110 of 2007 CAT at Dodoma (Unreported) insisted on chronological documentation on how exhibit handled until tendered in the court. However, upon the development of jurisprudence in our legal system the Court of Appeal in the case of **Abas Kondo Gede Vs Republic**, Criminal Appeal No. 472 of 2017 (Unreported) Court of Appeal at Dar es Salaam, stated that

'...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.'

As a matter of principle, it is well settled that as far as the issue of chain of custody is concerned, it is crucial to follow carefully the handling of what was seized from the accused person, is the same which was finally tendered or disposed of by the order of the court. In the case at hand to prove integrity of chain of custody all seven (7) prosecution witnesses dealt with exhibit 'bhangi' contained in seven sulphate bags paraded to the court to include PW1, PW2, PW3, PW4, PW5, PW6, and PW7 as well as the seven

documentary exhibits that is Exhibit P2, Exhibit P3, Exhibit P4, Exhibit P5, Exhibit P6, Exhibit P8 and Exhibit 9. There is no shadow of doubt that, the substance that were seized, were the very ones which were examined by the Government Chemist and finally tendered in evidence in this Court through the Inventory and certificate of destruction, Exhibit P3 and Exhibit P4 respectively. I am also well mindful that section 36 of the DCEA permit disposal of narcotic drugs at any time depending on its hazardous nature.

There are number of issues raised in by the prosecution evidence; **one**, that the seized narcotic drugs were transported in a different motor vehicle from the place of arrest to Holili police Station and from Holili to Mkuu Rombo Police Station. I carefully and dutifully considered if the exhibit could have been tempered on the way. According to PW3 and PW7 exhibits and accused persons were transported from the place of arrest to Holili Police station while in convoy, this also was a practice when the exhibits were transported in a vehicle with some armed police officers as per testimony of PW4. That the accused persons and the vehicle which carried the exhibit were in procession as they headed for Rombo Mkuu police station. I real find no possibility for the narcotic drugs to be tampered with under the circumstance. This is so from the fact that, the movement of both the accused persons and the exhibits from place of arrest to the two destinations, according to the testimonies of PW3, PW7 and PW4, were in a convoy. See the case of

Chukwudi Denis Okechukwu and 3 Others vs Republic, Criminal Appeal No. 507 of 2015, Court of Appeal at Dar es Salaam (Unreported).

Two, that, there is variation of weight according to the testimony of PW1 supported by Exhibit P1 versus the testimony of PW3, PW4 and PW7 supported by Exhibits P4, P5, P6 and P8. In the said two pieces of evidence show that the weight of leaves in the seven sulphate bags is 351 Kg in one hand and 373 Kg in the other hand. It was stated by PW3 and PW7 that the said leaves (bhangi) from seven sulphate bags were measured by PW3 the arresting officer immediate after search and seizure. That he secured a weigh scale from unknown person near Holili Police station. After weighing them he got a total of 373 kg. The place where the weigh scale was secured is not stated. Whether the weigh scale used by PW3 to weigh the exhibit was in proper working condition is the question which remains unanswered especially that the owner is not mentioned. However, since PW3 is not an authorised officer by law to weigh the exhibit on aspect of measuring weights, even the quality or standard of weigh scale used pose doubt since it was arbitrarily brought in the said exercise.

Also it is apparent from the evidence of prosecution that two weigh scales used to weigh 'bhangi' which were contained in the seven sulphate bags gave out two different results on the same subject matter. This is inevitable occurrence due to the standard, quality and propriety of the scale

used to measure the exhibit in question. However this contradiction on variation of weights resulted from two different weigh scales is minor, did not prejudice the accused persons rights and does not go to the root of the case thus cannot cause the prosecution case to flop. See the case of **Said Ally vs. Republic**, criminal Appeal No 249 of 2008, Court of Appeal (unreported). Also the said contradiction can be cured under section 388 of the Criminal Procedure Act, [cap 20 RE. 2022].

On the other hand through oral testimony of PW1 and exhibit P1 it revealed that weigh of the exhibit in question was among four things which PW1 required to do, and he did the same as required. From the reasons advanced above I disregard the evidence of PW3, PW4 and PW7 which supported by Exhibits P4, P5, P6 and P8 on the weight of 373 Kg while am in agreement of the weight of 351 kg as per evidence of PW1 with the support of Exhibit P1. See Section 48A (2) of the DCEA.

Having found that it is my considered opinion that the chain of custody of narcotic drugs and Exhibit P7 was maintained from the time of seizure to the time they were tendered in court.

Finally, from the above findings it is the finding of this Court that, the prosecution side has managed to prove the case against the first and second accused persons beyond reasonable doubt and fail to prove the case beyond

reasonable doubt against third accused person. I therefore find Denis Robert Uroki and Anna Ndasiwa Uroki, being the first and the second accused persons respectively guilty, and I hereby convict the first and the second accused persons of the offence charged while acquit the third accused person with the offence of trafficking in narcotic drugs contrary to section 15(1) (a) (3) (iii) of the Drug Control and Enforcement Act [Cap.95 R.E. 2019], read together with paragraph 23 of the First Schedule to and sections 57 (I) and 60 (2) of the Economic and Organised Crime Control Act [Cap.200 RE 2019].

Ordered accordingly.



G.N. Isaya
Judge
19/12/2022

Court:

Judgment delivered via video conference in the remotely presence of the 1st, 2nd and 3rd Accused persons, Diana Solomon, Advocate holding brief for Patrick Paul, Advocate for the 1st Accused and also Diana Solomon for 2nd Accused, Ms. Angel Mongi Advocate for the 3rd Accused and Tully Helela State Attorney . Hon. Chikawe (JLA) and Ms Saidi B/C.



G. N. Isaya
Judge
19/12/2022

SENTENCE

The first and second accused persons have been convicted of the offence of trafficking in narcotic drugs contrary to section 15(a) (3) (iii) of the drug Control and Enforcement Act (Cap 95 R.E. 2019) read together with paragraph 23 of the First Schedule to and section 57(1) and 60(2) of the organized Crime Act (Cap 200 R.E 2019)

In sentencing the accused persons, I have considered the submission by Ms. Tully SA, that the dealing in narcotic drugs in the offence charged has a very adverse effect and all people of all ages become victims. I have too considered that accused persons are first offenders who have stayed in custody for more than two years.

Having all in my mind, I am guided by the relevant legislations that is the Drugs Control and Enforcement Act (Cap 95 R.E. 2019) The Organized Crime Control Act (Cap 200 R.E 2019) and the Tanzania sentencing Manual for Judicial officers, which provide for minimum sentence of 20 years up to 30 years which is maximum penalty for a convict of an offence under 15(1)(a) of DCEA Cap 95, since the convicts are offenders who have spent two years behind the bars but having in mind that the narcotic drug pose great danger to the society, healthy and economy of the country I hereby sentence them each to serve twenty years(20) imprisonment. It is so ordered.



G. N. Isaya
Judge
19/12/2022

Order:

Exhibit P7 (Motorcycle with Reg. No. T.175 AMX Toyota Land Cruiser which is instrumentality of crime shall remain in the custody of the police as per order dated 28/11/2022.

The prosecution is hereby advised to deal with Exhibit P7 as per section 49A of the Drug Control and Enforcement Act, Cap 95 R.E 2019. Oder accordingly



G. N. Isaya
Judge
19/12/2022

Right of Appeal explained.



G. N. Isaya
Judge
19/12/2022