

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**CORRUPTION AND ECONOMIC CRIMES DIVISION**

**AT ARUSHA**

**ECONOMIC CASE NO. 10 OF 2022**

**THE REPUBLIC**

**VERSUS**

**ELIA GODWIN MBWAMBO**

**JUDGMENT**

7<sup>th</sup> and 14<sup>th</sup> December, 2023

**KISANYA, J.:**

Elia Godwin Mbwambo, the accused, is facing charges related to the trafficking of narcotic drugs, contrary to section 15 (1) (a) and 3(iii) of the Drug Control and Enforcement Act, Cap. 95, R.E. 2019 (hereinafter referred to as "the Drugs Act"), read together with paragraph 23 of the 1<sup>st</sup> Schedule to, and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200, R.E., 2019 [now R.E. 2022] (referred to as "the EOCCA").

According to the information filed in this Court, the alleged offence took place on 01/03/2022 at Ngaramtoni Forest area within the Arumeru District in the Arusha Region. It is asserted that the accused was found trafficking in narcotic drugs namely *Catha edulis*, commonly known as "mirungi," with a total weight of 187 kilograms.

In an effort to prove its case, the prosecution called upon five witnesses, including, Michael Saimon Benarnard (PW1), F.7355 CPL Evance (PW2), PF 19221 Insp. Deogratius Babile (PW3), Michael Daniel Dumu (PW4), and WP 12410 D/CPL Denfrida (PW5). Additionally, the prosecution built its argument on the strength of eleven exhibits, each admitted as evidence in the trial. These exhibits, are Sample Submission Form No. DCEA 001 (Exh. P1), Sample Receipt Notification Form (Exh. P2), Government Chemist Analyst Report (Exh. P3), Court Exhibit Register Book (Exh. P4), Motor vehicle (Exh. P5), Search order and certificate of seizure - PF91 (Exh. P6), Sampling Inventory Form No. DCEA 006 (Exh. P7), Inventory of seized exhibit for destruction – Form No. DCEA 006 (Exh. P8), Certificate of destruction (Exh. P9), Certificate of photograph (Exh. P10), and five still pictures (Exh. P11 collectively).

As per the prosecution's case, on 01/03/2022, at 12:00 hours, Inspector Babile (PW3), a police officer stationed at Arusha Central Police Station was at the Mjini Kati area within the City of Arusha. He received a tip about a silver Toyota Carina with registration number T793 CUY traveling from Namanga to Arusha via Ngaramtoni Forest, suspected of transporting Catha edulis (mirungi).

Relying on the provided tip, PW3 proceeded to Arusha Central Police Station, where he obtained a search order (Exh. P6). Subsequently, he disseminated the information to fellow police officers who were on patrol. Driving



his personal vehicle, PW3 arrived at the specified location and identified the vehicle matching the described particulars at the Ngaramtoni area. Taking decisive action, PW3 intercepted and blocked the identified vehicle, leading to the apprehension of an individual found therein.

Luckily, Michael Daniel Dumu (PW4) happened to pass by the scene. PW3 promptly contacted and identified himself to PW4, requesting him to witness the search of the vehicle suspected of carrying narcotic drugs namely mirungi. The person found within the vehicle, upon inquiry, introduced himself as Elia Godwin Bwambo, the accused person in this case. During the search of the accused person's vehicle, three sulphate bags were discovered, with two on the passengers' seat and one in the trunk. When PW3 opened one of the sulphate bags, he uncovered fresh leaves suspected to be mirungi, bundled and concealed by banana leaves and pieces of gazettes. As a result, the accused person's vehicle, bearing registration number T973 CUY and make Toyota Carina, along with the three sulphate bags, were seized. A certificate of seizure (part of Exh. P6) was duly signed by the seizing officer (PW3), the independent witness (PW4), and the accused person.

Following these events, PW3 ferried both the accused person and the seized exhibits to Arusha Central Police Station. Upon arrival, he conducted the weighing of the sulphate bags in the presence of the accused person and WP

12410 D/CPL Denfrida (PW5). During this process, PW5 documented the exhibits being weighed through photography. The total weight of all three sulphate bags, along with the substances contained therein, amounted to 187 kilograms.

Subsequently, PW3 instructed SGT Ally to record the statement of the accused person. Simultaneously, he entrusted the exhibits seized from the accused person to the exhibit keeper, CPL Evance (PW2). Upon receiving the exhibits, PW2 proceeded to weigh the sulphate bags and officially registered them in the Court Exhibits Register as Entry No. 31/2022 (Exh. P4). Continuing with the documentation process, PW2 labeled all exhibits with Entry No. 32/2022 and the case number AR/1R/2116/2022. Following these procedures, the exhibits seized from the accused person remained under the custody of PW2, who confirmed storing the sulphate bags in the exhibit room.

The vehicle with registration number T973 CUY was held in the custody of PW2 until it was eventually brought to the court and formally admitted as evidence under the designation Exh. P5. Concerning the sulphate bags containing fresh leaves suspected to be mirungi, PW2 handed them over custody to PW3 for sampling on 10/3/ 2022.

Upon receiving the three sulphate bags containing fresh leaves suspected to be mirungi, PW3 proceeded to Arumeru District Court. There, he met with Hon. Mwamini Kazema, a resident magistrate assigned to witness the sampling



process. From each sulphate bag, two samples were drawn, and each sample was carefully packed in an envelope. These samples were then labeled A and A2, B and B1, and C and C1, corresponding to the first, second, and third sulphate bags, respectively. The sampling process was conducted in the presence of various stakeholders, including PW5, who documented the exhibits through photography. Following the sampling, PW3 completed an inventory of the seized exhibit for disposal (Exh.P7). He applied, and the learned Resident Magistrate issued an order for the destruction of the sulphate bags containing fresh leaves suspected to be mirungi, totaling 187 kg.

Subsequently, PW3 dispatched the collected samples to the Government Chemist Laboratory Authority (GCLA) in Arusha. Upon arrival, he handed over the samples to PW1 Michael Sairorie Benardnard, a chemist at the GCLA. This transaction was documented through a sample submission form (Exh. P1). PW1 confirmed receipt of six samples labeled A, A1, B, B1, C, and C1, which he registered as Lab No. NZL 269/2022. He acknowledged the receipt of the samples by completing and signing a sample receipt notification form (Exh. P2).

Thereafter, PW1 weighed the samples, obtaining a total weight of 161.70 grams. Following analysis, he detected cathinone and cathine chemicals, both associated with the mirungi plant, in all the samples. PW1 then compiled a Government Chemist laboratory analyst report, stating that the samples indeed

contained narcotic drugs, specifically mirungi. This report was admitted in Court Exh. P3.

Simultaneously, the sulphate bags containing fresh leaves suspected to be mirungi were handed over to PW2 on 10/03/2022. However, it was not until 17/03/2022 that PW2 transferred the said exhibit to PW3 for the purpose of destruction. PW3 informed the Court that the exhibits were destroyed through burning, a process witnessed by various stakeholders, including Magistrate Mwakunga, a State Attorney, an environment officer, and representatives from both the GCLA and TISS. Additionally, PW5 documented the destruction through photographs, capturing key moments such as weighing and sampling. To corroborate this, PW3 tendered a certificate of destruction (Exh. P9) and a certificate of photograph (Exh. P10). As mentioned earlier, PW5's responsibility included taking photographs during the weighing, sampling, and destruction of the sulphate bags containing fresh leaves suspected to be mirungi, and she tendered in evidence five still pictures (Exh. P11 collectively).

In his defence, the accused person denied the charges brought against him. He contested the assertion that he was arrested at Ngaramtoni Forest area, maintaining that he worked as a taxi driver. According to his testimony, on the pertinent date, around 11:00 am, he was at Ngaramtoni area, where two individuals hired him to transport them to Soweto area. Upon arrival at Soweto



Garden, the passengers asked him to wait. Shortly thereafter, he claimed that he was approached by PW4, whom he recognized as a militiaman. PW4 allegedly offered to buy him soup at a nearby bar, but later, he was apprehended by PW4 on charges of involvement in the drug trade. The accused person asserted that he was then taken into custody by PW3 and taken to Arusha Central Police Station, where three sulphate bags were presented by an unidentified person. He contended that he was coerced into signing the certificate of seizure for the said sulphate. While acknowledging the weighing of the sulphate bags and their subsequent sampling and destruction, the accused person refuted the charge of trafficking in narcotic drugs. He insisted that his initial encounter with PW3 occurred at Soweto area, not Ngaramtoni Forest area, and implored the Court to declare him not guilty and acquit him

Following the conclusion of the defence case, the learned counsel legal both parties chose not to present or file final submissions.

After due consideration of the evidence adduced by both parties, the primary issue is whether the prosecution has proved its case beyond reasonable doubt. This issue is grounded in the overarching principle articulated in section 3(2)(a) of the Evidence Act, Cap. 6, R.E. 2022. This provision requires the court to be convinced by the prosecution, beyond any reasonable doubt, of the existence of the fact under consideration. Reference is also made to the

precedent set in the case of **Joseph John Makune v. Republic** [1986] TLR 44, where it was held that:

*"The cardinal principle of our criminal law is that the burden is on the prosecution to prove its case. The duty is not cast on the accused to prove his innocence."*

It is a fundamental principle that, the accused person is entitled to be acquitted of the charged offence if the court is convinced that the evidence presented by either the prosecution or the defence introduces a reasonable doubt regarding their guilt concerning the alleged offence.

In revisiting the present case, the charge of trafficking in narcotic drugs, as per the provisions of sections 15(1)(a) and 3(iii) of the Drugs Act, hinges on the prosecution establishing two main elements: *first*, that the accused person engaged in the trafficking of narcotic drugs namely mirungi, and *second*, that the weight of the trafficked narcotic drugs (mirungi) exceeded 50 kilograms.

Addressing the said elements leads to two sub-issues: whether the accused person indeed trafficked in mirungi, and whether the weight of the trafficked mirungi amounted to 187 kilograms. Notably, the resolution of the second sub-issue not only influences the determination of the appropriate sentence but also raises the question of the court's jurisdiction over the offence at hand. This is due to the fact that, according to section 15(2)(c) of the Drugs



Act, offences involving trafficking in narcotic drugs, specifically mirungi, weighing 50 kilograms and below fell under the jurisdiction of subordinate courts. The definition of "court" in section 2 of the Drugs Act further underscores that subordinate courts have jurisdiction over offences in contravention of section 15A.

The first sub-issue under consideration pertains to whether the accused person was involved in the trafficking of narcotic drugs namely mirungi. To address this sub-issue, two crucial questions need examination. First, it must be determined whether the accused person was apprehended in possession of three sulphate bags containing substances suspected to be narcotic drugs. If the answer to the first question is affirmative, the second question requires scrutiny: were the substances contained in the sulphate bags indeed narcotic drugs, commonly recognized as mirungi? The resolution of these inquiries will be instrumental in determining the accused person's involvement in the alleged trafficking of mirungi.

With respect to the first question, the testimony of PW3 reveals that he received information from an undisclosed informant indicating that a vehicle with registration number T 793 CUY (Exh. P5) was transporting narcotic drugs from Namanga to Arusha through Ngaramtoni Forest area. Subsequently, PW3, having obtained a search order from the Officer in Charge (OCS), proceeded to

Ngaramtoni Forest area, where he encountered the vehicle described by his informant. After blocking the vehicle, he apprehended the accused person. Notably, the record establishes that PW4 arrived at the scene after PW3 had already blocked and apprehended the accused, indicating that PW4 was not privy to the events that transpired prior to his arrival at the scene.

Upon careful consideration, it is crucial to note that PW3's testimony indicates that he refrained from taking any action with the vehicle until he observed PW4 and subsequently asked him to witness the search. According to the record, PW3 conducted the search of Exh. P5 in the presence of PW4, leading to the discovery of three sulphate bags containing fresh leaves suspected to be mirungi. Following this discovery, PW3 seized both the vehicle and the three sulphate bags, formalizing the seizure through a certificate (Exh. P6) that was signed by PW4 and the accused person.

In contrast, the accused person disputes the assertion that he was arrested at Ngaramtoni Forest area. Instead, he contends that his arrest occurred at Soweto Garden area, where he encountered PW4.

It is well-established in legal jurisprudence that each witness is entitled to credence, and his testimony is to be accepted unless there are substantial and compelling reasons to doubt its veracity. This legal principle was affirmed by the Court of Appeal in the case of **Goodluck Kyando v. Republic** [2006] TLR 363.



Moreover, the credibility of a witness can be assessed by examining the consistency of their testimony and by comparing it with the evidence presented by other witnesses, including that of the accused person. This legal standpoint has been underscored in various cases, such as **Raphael Mhando vs R**, Criminal Appeal No. 54 of 2017 (unreported), where the Court of Appeal cited its previous decision in the case of **Shabani Daudi vs R.**, Criminal Appeal No. 28 of 2000 (unreported). In the latter case, it was held:

*"The credibility of a witness can also be determined in two other ways: one, when assessing the coherence of the testimony of the witness. Two when the testimony of that witness is considered in relation with the evidence of other witness, including that of the accused person."*

Expanding on the preceding legal principles, it is well-acknowledged that contradictions in the evidence presented by one witness or more witnesses are inevitable, often arising from factors such as the weakness of human memory. Consequently, the court is obligated to overlook inconsistencies that do not fundamentally undermine the core elements of the case. Bearing this legal context in mind, it is imperative to scrutinize the credibility of PW3 and PW4 in light of the following factors.

A crucial point affecting the credibility of both PW3 and PW4 is the discrepancy in their testimony regarding the preparation of the certificate of

seizure. Initially, in their evidence in chief, both witnesses asserted that three sulphate bags containing fresh leaves suspected to be mirungi were seized through a certificate of seizure, which was completed and signed at the crime scene in Ngaramtoni Forest area. However, during cross-examination by the defence counsel, PW4 stated that the certificate of seizure was filled at Arusha Central Police Station.

The inconsistency in the testimony regarding the preparation of the certificate of seizure carries significant weight and raises a doubt regarding the reliability of this crucial piece of evidence. A legal precedent, as per the case of **Leonard Felesiano vs R**, Criminal Appeal No. 238 of 2020 (unreported), underscores is that, a certificate of seizure loses its evidentiary weight if it was not prepared and signed at the location where the exhibit was found. In light of this legal position, the contradiction surrounding the place of the certificate of seizure's preparation cannot be taken lightly.

This inconsistency assumes particular importance in the context of the accused person's challenge to the assertion that he was arrested at Ngaramtoni area. The diverging accounts regarding the location of the arrest and the preparation of the certificate of seizure introduce a crucial element of doubt into the case.



The second point of contention pertains to the location specified in the certificate of seizure, which indicates that the search and seizure occurred at Ngaramtoni, as opposed to Ngaramtoni Forest area as testified by PW3 and PW4. Notably, neither witness clarified whether Ngaramtoni and Ngaramtoni Forest area are synonymous. PW4, indicating he resided at Ngaramtoni, and PW3 mentioning the absence of residential houses at the scene, further complicates the matter. The ambiguity surrounding whether Ngaramtoni and Ngaramtoni Forest refer to the same location gives rise to a substantial doubt.

Given that the information specifies Ngaramtoni Forest area as the place of the alleged offence, the contradiction in the evidence regarding the actual location of the search and seizure becomes pivotal. This inconsistency is not merely a minor discrepancy but pertains to a fundamental aspect of the case, potentially undermining the integrity of the prosecution's narrative. The doubt introduced by this contradiction is substantial and, therefore, impacts the core of the case.

The third issue arises from the unanimous testimony of PW3 and PW4 that, of the three sulphate bags seized from the accused person's vehicle, only one was opened at the crime scene, revealing fresh leaves suspected to be narcotic drugs namely, mirungi. The remaining two sulphate bags were not inspected on-site. This raises a significant concern regarding the accuracy and

justification behind PW3 recording in Exhibit P6 that all three sulphate bags contained fresh leaves suspected to be narcotic drugs, namely, mirungi.

In view of the foresaid factors, it is clear that PW3 and PW4 presented a story which was not coherent and consistent. Their credence cannot be said to be impeccable. I also observed PW3's demeanor in the witness box. He took time to respond to some questions put to him by the defence. If the evidence of PW3 and PW4 is not considered, the remaining evidence is not sufficient for this Court to hold that the accused was found carrying three sulphate bags containing substances suspected to be narcotic drugs. I find thus find no need of addressing the second question.

The subsequent issue, even if it is established that the accused person was found with sulphate bags containing mirungi, is whether the weight of the mirungi corresponds to the specified 187 kilograms indicated in the particulars of the offence. A pivotal reflection is the authority vested in the Government Chemist Laboratory Authority (GCLA) to conduct the weighing and analysis of substances suspected to be narcotic drugs. This legal stance finds support in the case of **Omary Said Athumani vs R**, Criminal Appeal 58 of 2022 [2022 TZCA 270], where the Court of Appeal held:



*"We also agree with him and indeed it is the law that, the weighing and analysis of substances suspected to be narcotic drugs is within the domain of the CGC."*

The Court of Appeal proceeded to endorse its decision in **Charo Said Kimilu vs. R**, Criminal Appeal No. 111 of 2015 (unreported). In that case, it was held that:

*"Narcotic drugs or psychotropic substances should be submitted to the Government Chemist laboratory Agency for weighing and analysis before tendering it as evidence in court".*

In this instance, the Government Chemist Laboratory Agency (GCLA) received representative samples of suspected narcotic drugs for analysis. As per the testimonies of PW3 and PW5, these samples were extracted from three sulphate bags purportedly seized from the accused individual. Consequently, it is evident that the substances suspected to be narcotic drugs (mirungi) were not subject to weighing at the GCLA. It is worth noting that the weight indicated in the Government Chemist Analyst Report (Exh. P3), amounting to 161.70 grams, is confined to the samples alone.

Given that the GCLA received samples for analysis, it is anticipated that the weight of substances suspected to be narcotic drugs would have been determined at the time of sampling, in accordance with regulation ~~16(b) of the Drug Control and Enforcement (General) Regulations, 2016~~. Additionally, it is

pertinent to highlight section 36(3)(c) of the Drugs Act, which mandates the drawing of samples of narcotic drugs in the presence of a magistrate, who then certifies the accuracy of the list of samples drawn. It is crucial to note that this requirement is exempted when it is impractical to secure the presence of the magistrate, as explicitly stated by the law.

In our case, both PW3 and PW5 provided testimony confirming that samples were indeed drawn from the substances suspected to be narcotic drugs in the presence of the magistrate. This fact was unchallenged and not disputed by the magistrate, and further substantiated by the sampling inventory form. However, it is crucial to note that PW3 explicitly stated that the substances suspected to be narcotic drugs (mirungi) were not weighed during the sampling process. Consequently, the sampling inventory form (Exh. P7) cannot be relied upon to ascertain the gross or net weight of the narcotic drugs central to this case.

The remaining evidence concerning the weight of the narcotic drugs is presented through the testimonies of PW2, PW3, and PW5. These witnesses testified under oath that the sulphate bags containing dry leaves suspected to be mirungi were weighed on 01/03/2022 at the Arusha Central Police Station. Importantly, the accused did not contest that the sulphate bags were weighed in his presence, and he acknowledged that photographs were taken during the



weighing process. However, he distanced himself from the weighed sulphate bags.

From the outset, as weighing is an integral part of the sampling process, it was expected to have been conducted in the presence of the magistrate. However, the Court has not been provided with information on whether it was impractical to secure the presence of the magistrate during weighing. Additionally, the evidence adduced by PW2, PW3, and PW4 shows that the fresh leaves suspected to be mirungi were bundled together, covered by banana leaves and pieces of gazettes, and packed into three sulphate bags. Notably, none of them provided details about the weight of the narcotic drug in each sulphate bag.

Moreover, they explicitly mentioned that the total weight of 187 kilograms included not only the narcotic substance but also banana leaves, pieces of gazettes, and empty sulphate bags. In light of this, there is a clear lack of evidence regarding the precise weight of the narcotic drugs allegedly trafficked by the accused person. Consequently, the second sub-issue is answered in the negative as well.

In light of the presented evidence, I am convinced that the prosecution has not met the burden of proof beyond a reasonable doubt to

establish that the accused person committed the offence with which he is charged. Consequently, I find the accused person not guilty, and I hereby acquit him of the offence of trafficking in narcotic drugs, as per the provisions of section 15 (1) (a) and (3) (iii) of the Drugs Act, read together with paragraph 23 of the 1st Schedule, and sections 57 (1) and 60 (2) of the EOCCA. Further to this, I order that the vehicle, Toyota Carina with Registration No. 793 CUY (Ex. P5), be returned to the accused person.

DATED at ARUSHA this 14<sup>th</sup> day of December, 2023.



  
**S.E. KISANYA**  
**JUDGE**  
14/12/2023