

**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT MTWARA SUB-REGISTRY**  
**ECONOMIC CASE NO. 4 OF 2022**  
**THE REPUBLIC**  
**VERSUS**  
**1. MOHAMED THABIT MANGAKA**  
**2. SHABAN HASSAN SAID**

**JUDGMENT**

**ISAYA, J.:**

The accused persons, Mohamed Thabit Mangaka and Shaban Hassan Said being the first and the second accused persons respectively stand charged before this court 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 RE 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 RE 2019] as amended.

It is alleged that, on the 28<sup>th</sup> day of August, 2019 at Ng'uni village within Masasi District in Mtwara Region, the accused persons were found trafficking in 169.12 kilograms of narcotic drugs namely Cannabis Sativa commonly known as 'Bhangi'.

At the trial, Ms. Tully Helela and Ms. Ellen Masululi, Learned State Attorneys represented the Republic, while Mr. Emmanuel Ngongi and Mr.

steven Lekey, Learned Advocates, represented the accused persons. I extend my appreciation the team of members of the bar for the commitment, hard work and attentive cooperation.

To establish the case against the accused persons, the prosecution side in seven (7) witnesses to testify, namely, Abdilahi Mustafa Kimuja (PW1), Gabriel Jacob Gabriel (PW2), ASP Iddi Omary (PW3), A/Insp. Manyasi (PW4), PF. 2157 A/Insp. Fundi (PW5), Hamis Athuman Said, (PW6) and G.1963 D/CPL Hamduni (PW7). They also tendered nine (9) exhibits, which were admitted, thus: Exhibit P1 Sample Submission Form (DCEA 001); Exhibit P2, (letter from GCLA Mtwara); Exhibit P3, Bhangi contained in ten Sulphate bags; Exhibit P4, Government Chemist Analyst Report (DCEA 009); Exhibit P5, two motorcycles Make SANLG; Exhibit P6 (1) and P6 (2)(Exhibit P6), Two certificates of seizure (DCEA 003); Exhibit P7, chain of custody form and Exhibit P8, the statement of E.3164 CPL Hassan. On the other hand, the accused persons under representation of Mr. Emmanuel Ngongi, Learned Counsel testified themselves under oath as DW1 and DW2. Besides, they did not tender any exhibit.

In the main, the body of evidence by the prosecution side presented a case that, on 28<sup>th</sup> August 2019, PW1 and some police officers CPL Humphrey D/CPL Hamduni and PC Mohamed at about morning hours while in the Patrol

at Chiungutwa village he received information from the informant that, there were two people riding two motorcycles from Mpalawe village carrying Bhangi. They waylaid them at Ng'uni village, along Lutala to Mbuyuni road ready to ensnare them. At Ng'uni village two young men (first and second accused persons) on two motorcycles arrived each carrying five bags, in total 10 bags (Exhibit P3). He suspected and stopped them, started to interrogate them as to what they carried. They could not reply once therefore he made a small opening on one of the bags and saw dry leaves suspected to be bhangi.

Thereafter PW1 sent PC Mohamed to secure an independent witness after a while PC Mohamed went back with one person called Hamis Athuman (PW6) who introduced himself as member of the village council. After his arrival and introduction to each other, PW1 conducted search on the ten sulphate bags (bags containing dry leaves). He seized all the ten sulphate bags containing dry leaves alleged to be bhangi (Exhibit P3) and the two motorcycles (Exhibit P5). He filled the two certificates of Seizure [Exhibit P6 (1) and P6(2) which was signed by PW1 himself, PW6 and both accused persons. He then took Exhibits P3 and P5 together with accused persons to Masasi Police Station where the case with IR No. MSS/IR/1736/2019 was filed, Exhibits P3 and P5 were labelled with the case IR Number and handed over to one CPL Hassan who in turn handed over to PW5 for safe custody on

29/8/2019. PW5 registered Exhibit P3 and P5 with entry No. 31/2019 and kept in exhibit room until on 19/12/2019 when he handed over Exhibit P3 for the purpose of taking them to the Government Chemist Laboratory Authority, Southern Zone Mtwara for the purpose of conducting Laboratory analysis. At the GCLA Southern zone, PW4 handed over the Exhibit P3 to PW1 who labelled the ten sulphate bags with letters A, B, C, D, E, F, G, H, I and J, also he labelled with Laboratory register No. SZL/67/2019. He later weighed the said Exhibit P3 and got 169.12 kilograms. He collected samples from each of the ten sulphate bags containing dry leaves for the purpose of transferring to the GCLA at Dar es Salaam. After taking samples from each sulphate bag PW1 sealed Exhibit P3 with the GCLA sole tape, signed and handed over to PW4 who took back to Masasi police station the exhibit on the same day and handed to PW5 for the safe custody.

On 21/02/2020 PW1 took the samples which were in the ten envelopes to GCLA Dar es Salaam and handed over the samples to PW2 for laboratory analysis. He had labelled the ten envelopes A, B, C, D, E, F, G, H, I and J. PW2 conducted both preliminary and confirmatory tests on ten samples and finally it was revealed that the samples are narcotic drug namely Bhangi weigh 169.12 kilograms. The case was investigated by PW7 who arraigned the accused persons in court.

At the closure of prosecution case, the court was of the opinion that both of the accused persons had a case to answer in respect of the offence charged with. The Accused persons were invited to enter their respective defences in accordance with the provisions of section 293 of the Criminal Procedure act, Cap 20 R.E 2022.

Generally, the first and the second accused persons deny to have been arrested on the 28<sup>th</sup> August, 2019 at Ng'uni village. Largely, the defence evidence, according to DW1 is to the extent that, on the 27<sup>th</sup> August 2019 he was arrested at Mbuyuni village where he was fetching water for mixing in pesticides for cashew nut trees during night hours. According to him, he fetched water from Mbuyuni through Luatala on bicycle when he saw a motorcycle which carried three people heading to his direction. It stopped and the said people on motorcycles started to interrogate him. They introduced themselves as Police Officers and that they were on special operation for terrorists who travel during night. He went on to state that PW6 beat him and took his phone. That they took his money Tsh. 570,000/= too. DW1 went on to state that they took him to Mbuyuni Ward office, then to Chiungutwa Police Post and later on at 10:00 to 11:00 hours he was taken to Masasi Police station. He also testified that he was forced to sign on documents he did not know. That on 04<sup>th</sup> September 2019 he was arraigned

before the court for the offence of narcotic drug while he does not know the Exhibits P3 and P5.

DW2 in his version he had the testimony that he was arrested by the Police at Mitonji Village at night, around 01:00 hours on the 27<sup>th</sup> August 2019 for the offence of disorderly person. Immediate after his arrest he was taken to Chiungutwa Police Post and after three hours, on 28/08/2019 he was taken to Masasi Police Station where he was told that he assisted one namely Niko to commit the offence of theft as they steal motorcycles. At Masasi police Station he was forced to sign documents and on 4<sup>th</sup> of September 2019 he was arraigned in the District Court Masasi where he was informed of the offence of trafficking in narcotic drugs. DW2 stated that he does not know about Exhibits P3 and P5.

Having gone through the evidence from both the prosecution and defence sides, there are three issues for determination, **one**, *whether Exhibit P3 is narcotic drugs*; **Two**, *whether Exhibit P3 was seized from the first and second accused persons*; and **Three**, *whether the chain of custody was maintained*.

Starting with the first issue, the prosecution evidence particularly PW1 and PW2, the Chemists at the Government Chemist Laboratory Authority, Southern zone and Dar es Salam respectively, will throw a green light on this

issue. In the testimony of PW1, he stated that, on 19/12/2019 while he was at the GCLA Southern zone, Mtwara he received Exhibit P3 (dry leaves contained in ten sulphate bags) together with Exhibit P1 and a letter from OCCID Masasi and PF.180 from PW4. Having received Exhibit P3 he registered it with Laboratory number SZL/67/2019. He then labelled the said exhibit (dry leaves contained in ten sulphate bags) with A, B, C, D, E, F, G, H, I and J, also labelled with SZL/67/2019 and weighed the bags. He got a total of 169.12kg. Thereafter, he collected samples from each sulphate bag, placed them in khaki envelopes and labelled the said envelopes with letters A, B, C, D, E, F, G, H, I and J, corresponding the sulphate bag from where he had drawn them. He finally kept the samples in a safe place ready for transportation.

On 21/02/2020 PW1 took the samples which were in the ten envelopes labelled A, B, C, D, E, F, G, H, I and J to GCLA Dar es Salaam where he handed over the said samples to PW2 for laboratory analysis. PW2 joined to state that he received the samples in ten Khaki envelopes labelled letter "A" to "J" with registration No. SZL/67/2019 together with a letter for submission of sample from PW1. Immediate after receiving he registered the same with No. 737/2020. Thereafter PW2 in the presence of PW1 conducted a preliminary test using a chemical which after composition the samples turned from colourless to violet, which showed that all 10 samples in ten envelopes

were narcotic drug namely cannabis sativa "bhangi". PW2 went on to state that after preliminary test PW1 left and PW2 kept the samples in a cabinet for safe custody.

PW2 went on to state that later on he conducted confirmatory test by preparing all samples and put them in a machine. Before putting in the machine he ensured that the same was in a good working condition to enable him to get correct results. He added heat on the machine to eliminate any residual stuff also he made a test of pure chemical solvent to ensure that there was no any other material which could cause to give wrong finding. He later injected all the ten samples. After that the samples revealed that there was a chemical in all samples called Tetra hydro cannabinol, the chemical which is available in "bhangi" only. He thereafter prepared analysis report (Exhibit P4) which he signed and the head of department signed to confirm the findings. Exhibit P4 was sent to Southern zone Mtwara where PW1 received it. PW1 wrote a letter to OCCID Masasi (Exhibit P2) which he thereafter sent both Exhibits P2 and P4 to the OCCID Masasi.

Also it was further testimony of PW1 that it took from 19/12/2019 to 21/02/2020 for him to take the samples to Dar es Salaam for laboratory analysis due to shortage of facilities which include human resources and financial difficulties. PW2 defended in his testimony that the requirement of



14 days for samples to reach the laboratory was put for client service charter to expedient service to customer, that noncompliance of the fourteen days requirement did not affect the samples in question as the same were dry leaves.

In the instant case PW1 and PW2 are both experts who testified on how Exhibit P3 was weighed, sample collected and how the laboratory tests were conducted by PW2. I real find that there is no any evidence or fact which contradict this piece of evidence from PW1 and PW2 on how Exhibit P3 was received, tested and the conclusion which revealed that the same is Bhangi weighing 169.12 Kilograms. 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.'*

Again, 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.'*

In the instant case, admittedly, there is an omission of not taking samples in duplicate. Again, there is no adherence of recording the amount of samples taken. I however find the omissions to be minor and, legally speaking, cannot invalidate the findings made by PW1 and PW2. Therefore, from the finding made hereinabove Exhibits P2 and P4 are conclusive evidence that Exhibit P3 is narcotic drugs namely cannabis sativa "Bhangi" with weight of 169.12 kilograms.

Coming to the second issue, it is the evidence of PW3 that on a fateful day in the morning hours while, PW3 and some police officers CPL Humphrey, D/CPL Hamduni and P/C Mohamed were on the Patrol at Chiungutwa village, he received information from the informant that, there were two people riding two motorcycles from Mpalawe village carrying Bhangi. They waylaid them at Ng'uni village, a place from Luatala to Mbuyuni. While they waited at the snare point at Ng'uni village, the first and the second accused persons appeared on two motorcycles. They each carried five sulphate bags, in total 10 bags (Exhibit P3). He suspected and stopped them, started to interrogate them as to what they carried. They could not reply once therefore he made

a small opening on one of the bags and saw dry leaves suspected to be bhangi.

Thereafter PW3 sent P/C Mohamed to secure an independent witness. After a while P/C Mohamed came back with one person called Hamis Athuman (PW6). The testimony of PW3 and PW6 is to the effect that, after arrival of PW6 and introduction to each other including the accused persons, PW3 conducted search on ten sulphate bags containing dry leaves by opening each sulphate bag and inspect to see what contained therein. They both saw dry leaves suspected to be Bhangi. PW3 seized all the ten sulphate bags (Exhibit P3) and the two motorcycles make SANLG. That one of them was black with reg. No. MC 48 BV, the part of the registration plate number was broken and the other had a black and red cover which covered fuel tank and the seat, with no registration number or plate number (Exhibit P5). PW3 filled two certificates of Seizure (Exhibit P6 (1) and P6 (2)) and listed the items seized. Thereafter the said certificates were signed by PW1 himself, PW6 and both the accused persons.

During cross examination of PW3, PW6 and PW7 it appears that in Exhibit P6 (1) and P6 (2) and Exhibit P7 it was recorded Nguni village instead of correctly recording it as Ng'uni village as stated in the charge and in the testimony of above prosecution witnesses. The witnesses maintained that,

Nguni in Exhibits P3 and P7 is an error on writing as authors omitted to put an apostrophe between g and u.

On the other hand, both of the accused persons denied to have been arrested at the place stated by the prosecution witnesses. They therefore invoked the defence of *alibi*. However, their *alibi defence* was in contravention of section 42 (1) (2) of the EOCCA, the law requires that the accused persons ought to have notified the Court their intention to rely on *alibi* as their defence during the preliminary hearing or to furnish the prosecution with the particulars of their *alibi* before the closure of prosecution case. It is very unfortunate that the accused persons in the instant case did not do either of the two. Both the accused persons were duly represented by learned Advocates who were conversant with the procedure of notifying the Court to that effect. It is on that reason I find their *alibi* defence to be devoid of honest, and nothing else but an afterthought. However, the court will keep considering their defence. See the case of **Hamisi Bakari Lambani Vs Republic**, Criminal Appeal No. 108 of 2012, CAT at Mtwara (Unreported). There is another complaint which the accused persons made on their defence that they were forced to sign on documents which were unknown to them.

Before answering the second issue it is important to note that, it is a cardinal principle that where the testimony by witnesses contain

inconsistencies and contradictions, the court has a duty to address the inconsistencies and try to resolve them where possible, else the court has to decide whether the inconsistencies and contradictions are only minor or whether they go to the root of the matter. See the case of **Mohamed Said Matula vs. R** [1995] TLR. 3.

Again in the case of **Joseph Sypriano Vs Republic**, Criminal Appeal No. 158 of 2011, CAT at Arusha (Unreported), the Court of Appeal held that;

*"Accordingly, we would have ruled out that discrepancies were not fatal if that was only discrepancy. This is because not every inconsistency however so minor, irrelevant, or flimsy would be taken into account in assessing a witness credibility the entire evidence has to be considered as one whole before a decision can be reached as to its veracity"*

In the case at hand there is a contradiction as to whether the place claimed to be a crime scene is Nguni as written in Exhibits P3 and P7 or Ng'uni as stated in oral evidence of PW3, PW6 and PW7 as well as in a charge. In this regard, I have very carefully considered the circumstance and extent of the discrepancy. There is however no evidence from either of parties showing that there are two villages namely Nguni and Ng'uni rather there is evidence of prosecution showing that the village referred to as Nguni in Exhibits P3

and P7 is the same village referred as Ng'uni in the testimony of PW3, PW6 and PW7. The defense side did not state if there is a village in the name of Nguni in the same district. On that sense it is my opinion that PW3, PW6, PW7, certificates of seizures Exhibit P6 (1) and P6 (2) and chain of custody record Exhibit P7 refer to the one and same place where accused persons were allegedly arrested and search and seizure conducted. I therefore find the contradiction to be minor and does not go to the root of the case. Above all, it did not prejudice the accused person's rights and consequently cannot cause the prosecution case to flop.

Also during the testimony of DW2 raised issue of age to the effect that, during his arrest for alleged committed offence the second accused was at of 17 years. This is a very serious issue in which the court cannot leave it untouched. All over the trial the second accused person was represented by an Advocate. Sadly, he did not raise the issue of his age anywhere from the beginning of the trial until the time of his defence. If at the earliest stage of the trial of this case, the second accused or his Advocate would have raised the question of age of the second accused person to be under 18 years, the prosecution would have been seized with a duty to prove that the accused was 18 or above years of age. The trial court would be obliged to conduct an inquiry and make a finding of his exact age. It is very unfortunate that the same was not raised at the reasonably earliest stage. During Cross

examination of DW2 he admitted that he did not contest his age during Preliminary Hearing. In considering this, I have it in my mind that preliminary hearing is part and parcel of the trial. In the circumstance it is my view that second accused person himself is among the persons who is in a better position to know his age. Being that as it may be, it is his duty to prove his age, considering that he stated that his mother and father have been passed away while he was in remand custody otherwise this piece of evidence is an afterthought.

Now, were the accused persons forced to sign in the documents? I think, the more scrutiny of search and seizure of Exhibit P3 can again throw a green light on this second issue. In the case of **Song Lei vs. the DPP, and the DPP Vs Xiao Shaodan and Two Others**, Consolidated Criminal Appeal Nos. I6'A' of 2016 & 16 of 2017, CAT at Mbeya (unreported), the Court of Appeal stated that;

*"...having signed the certificate of seizure which is in our considered view valid, he acknowledged that the horns were actually found in his motor vehicle."*

In the case at hand certificates of seizure Exhibit P6 were filled at Ng'uni village the place where the accused persons were allegedly arrested, searched and found with Exhibit P3 (dry leaves in ten sulphate bags) carried in Exhibits P5. The defence evidence that the accused persons were forced

to sign and were not at the place stated by the prosecution witnesses and that PW6 is not an independent witness did not feature in any place of their cross examination during testimony of PW3 and PW6 being crucial witnesses to the search and seizure of Exhibit P3. 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".*

This same position was observed in the case of **Nyerere Nyague vs. Republic**, Criminal Appeal No. 67 of 2010, CAT (unreported), the Court of Appeal was of the view that;

*"As a matter of principle, a party who fails to cross-examine a witness on a certain matter and will be estopped from asking the trial court to disbelieve what the witness said."*

The DW1 and DW2 did not cross-examine on the matters they relied upon in their defence. They did not cross-examine on being arrested at Mbuyuni and Mitonji villages and not as testified by PW3 and PW6, how they have been taken to the Masasi Police Station, that they both had never seen the Exhibits P3 and P5 before brought in court and they had been tortured



and forced to sign the certificates of seizure Exhibit P6 (1) and P6 (2) at the Police Station and not where the prosecution witnesses stated.

It is my considered view that failure to cross examine on these important matters adduced by prosecution witnesses, safely vouches to the acceptance of truthfulness of prosecution witness. The defence in this present case accepted the said truthfulness of the prosecution witnesses' evidence. The evidence advanced by DW1 and DW2 is purely an afterthought.

During cross examination PW3 stated that he did not show any document to the accused persons before search. And he went on stating that he got information while on patrol consequently it was an urgent information. According to the evidence of PW3 show that due to the seriousness and urgency of the matter under the circumstance he found a way to execute search to the accused persons without any order or warranty and the same was valid under the provision of section 42 (1) (a) (i) and (ii) and (2) of the CPA, Cap 20 [RE. 2022]. Having said that I find that the second issue ought to be answered positively. I so do.

The third issue is the question as to whether the chain of custody was maintained in this case. It is the prosecution evidence that, particularly PW3, after they had arrested the accused persons at the crime scene on 28/08/2019, he sent P/C Mohamed to secure an independent witness one Hamis Athuman (PW6). The testimony of PW3 and PW6 is to the effect that,

after arrival of PW6 and introduction to each other including the accused persons, in the presence of PW6 and accused persons, PW3 conducted search on the ten sulphate bags containing dry leaves by opening each sulphate bag and inspected them to see what was contained therein. They all saw dry leaves suspected to be Bhangi. PW3 seized all the ten sulphate bags (Exhibit P3) and the two motorcycles, make SANLG, one of them being black with Reg. No. MC 48 BV, the part of the registration plate was broken and the other having a black and red cover which covered fuel tank and seat, which had no reg. No. (Exhibit P5). PW3 filled two certificates of Seizure [Exhibit P6 (1) and P6 (2)], listed the items seized, and thereafter the said certificates were signed by PW1 himself, PW6 and both the accused persons.

The evidence show that he then took Exhibits P3 and P5 together with the accused persons to Masasi Police Station where the case with IR No. MSS/IR/1736/2019 was filed against the accused person. The Exhibits P3 and P5 were labelled with the case IR number and on the same day he handed over to one E.3164 CPL Hassani whose statement was admitted as Exhibit P8. According to Exhibit P8 after receiving the exhibits, E 3164 CPL Hassani kept the Exhibit P3 at the CRO until on 29/08/2019 when he handed the said Exhibits P3 and P5 to PW5 for safe custody. It is the evidence of PW5 that he received Exhibit P3 and P5, registered them in Exhibit register with entry No. 31/2019 and kept the said exhibits. That on 19/12/2019 in the morning he

handed over Exhibit P3 to PW4 for the purpose of taking it to the GCLA southern Zone Mtwara. PW4 in his evidence stated that he took Exhibit P3 to the GCLA where it was received by PW1 who weighed and took samples from each sulphate bag of Exhibit P3. He labelled the same with letter A to J and Laboratory number SZL/67/2019, sealed and signed on each sulphate bag of Exhibit P3. He thereafter handed the said Exhibit back to PW4. It is the evidence of PW4 and PW5 that on the same day in the evening PW4 handed over Exhibit P3 to PW5 who received and kept the same until the day it was tendered in the court.

In his testimony PW7 stated that he was the investigator of this case. That on 28/08/2019 he interrogated and recorded the statement of the two accused persons; Mohamed Thabiti Mangaka and Shabani Hassan Said. On 29/08/2019 he received a File from OCCID Masasi with Ref. No. MSS/IR/1736/2019 with the offence of being in unlawful possession of bhangi. That he prepared a chain of custody record Exhibit P7. And on 01/09/2019 he interrogated and recorded the statement (Exhibit P8) of E.3164 CPL Hassani as witness.

That on 04/09/2019 he weighed the Exhibit P3 at the store and got a total weight of 169.12 kg. He prepared the charge and on the same day he arraigned the accused persons at Masasi District court. He went on with

investigation, but at that time the police vehicle was defective and was on maintenance at Ndanda Mission garage till on 19/12/2019, the day when the exhibit was taken to GCLA Office Mtwara. Thus, the Exhibit P3 could not be taken to the GCLA on time due to transportation problem.

On the other hand, the defence during cross examination asked the question if an officer below the rank of sergeant could be an Exhibit keeper, and the absence of handing over documents including Exhibit Register.

In this case, the prosecution paraded five witnesses and produced four documentary exhibits showing how Exhibit P3 was handled until tendered before the court. In the case of **Chacha Jeremiah Murimi and 3 others vs Republic**, Criminal Appeal No. 515 of 2015, CAT at Mwanza (Unreported) the Court of Appeal explained that;

*"In establishing chain of custody, we are convinced that the most accurate method is on the documentation as stated in **Paulo Maduka & Others vs. Republic**, Criminal Appeal No. 110 of 2007 and followed in **Makoye Samwel @ Kashinje and Kashindye Bundala**, Criminal Appeal No. 32 of 2014 cases (both unreported). However, documentation will not be the only requirement in dealing with exhibits. An exhibit will not fail the test merely because there was no documentation. Other factors have to be looked depending on the prevailing circumstances in particular case.*

In this case the prosecution produced both oral and documentary evidence to prove maintenance of chain of custody of Exhibit P3. I think, the absence of handing over documentation including Exhibit register cannot be conclusive proof that the chain of custody of Exhibit P3 was not maintained. Even if there were no documentations at all, I think, since the prosecution paraded all important witnesses who dealt with exhibit P3 which in my consideration are credible witnesses, the same complemented the absence of the handing over documentation. Again, Exhibit P3 (leaves contained in ten sulphate bags) are items which cannot change hands easily. I hold that Oral evidence of PW1, PW3, PW4, PW5, PW6 and PW7 is adequate to prove the integrity of the chain of custody of exhibit P3.

Further determination of issue of chain of custody features on PW6 who was exhibit keeper below rank of sergeant as arouse by the defence on cross examination of PW6. **PGO 226 paragraph 19** provides for that;

*"The keys of the exhibits store will be kept by the O/C. Station or **by an officer specifically nominated by him and the holder will be responsible for the contents of the store**, provided that in no case will be key be held by an officer below the rank of Sergeant Major **unless otherwise provided in local Station Standing Orders.**"*

In the case at hand, PW6 at the time he kept Exhibit P3 he was police constable (G 4934 P/C Fundi), it is true that the PGO 229 paragraph 19 requires an exhibit keeper to be a police officer with a rank of sergeant major, however this requirement is not limited to such rank. The said PGO requires that any person nominated by O/C station and also a person below a rank of sergeant major can be exhibit keeper as per station standing order. The importance of the integrity of the chain of custody of exhibits is assurance of their reliability. I hold that for PW6 to be an to be exhibit keeper did not prejudice accused persons' right in any way.

But again, in the evidence of PW7, he gave a justification as to why it took so long, about three months for exhibit P3 to be taken to CGC office at Mtwara. PW7 stated that, Masasi Police station had one motor vehicle, which at the time in question it was defective being repaired at Ndanda mission garage until on 19/12/2019. I find the reason advanced by PW7 and a period accounted for delay of taking Exhibit P3 to CGC are satisfactory to this court to hold that there is justification for the delay and the same is reasonable.

Having discussed the facts visa vis legal position concerning the issue at hand, it is my considered opinion that chain of custody of Exhibit P3, was not broken from the time they were seized from the accused persons to the

same being tendered before the court. Hence the issue is affirmatively answered.

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 to the hilt. I therefore find Mohamed Thabit Mangaka and Shaban Hassan Said, being the first and the second accused persons respectively guilty, and I hereby convict the first and the second accused persons for the offence of trafficking in narcotic drugs contrary to section 15(1) (a) (3) (iii) of the Drug Control and Enforcement Act [Cap.95 .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**  
**29/03/2023**

Judgment delivered through visual court this 29<sup>th</sup> day of March, 2023  
in the presence of the accused person, Mr. Enosh Kigoryo, State Attorney,

Mr. Emmanuel, Advocate for the accused person and Hon. Chilemba Chikawe (JLA).



**G.N. Isaya**  
**Judge**  
**29/03/2023**

Right of appeal fully explained.



**G.N. Isaya**  
**Judge**  
**29/03/2023**

### **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 Drugs Control and Enforcement Act [Cap 95 RE. 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 RE 2019). In sentencing the accused persons, I have considered the prayers by Mr. Kigoryo to the effect that this court to punish the accused persons severely as provided under the DCE Act Cap 95 in the offence charged. I have too considered that accused persons are first



offenders, depended by their families and they are still young. Having all in my mind, I am guided by the relevant legislations that is the Drugs Control and Enforcement Act [Cap 95 RE. 2019] The Economic and Organized Crime Control Act [Cap 200 RE 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(i) (a) and 3 (iii) of DCEA Cap 95. I hereby sentence them each to serve twenty years (20) imprisonment.

It is so ordered.



**G.N. Isaya**  
**Judge**  
**29/03/2023**

## **ORDER**

1. Exhibit P5, two motorcycles, make SANLG, one with red and black color and without plate number, the second with a broken plate No. bearing Reg. No. MC 48 BV, black color, which are the instrumentality of crime shall remain in the custody of the police as per order of the court on 14<sup>th</sup> March 2023.

2. The prosecution is hereby advised to deal with Exhibit P5 as per section 49A of the Drugs and Enforcement Act, [Cap. 95 RE 2019].
3. Exhibit P3 be destroyed in accordance with the Drugs control and Enforcement Act, [Cap. 95 R.E 2019] and the Drugs Control and Enforcement (General) Regulations 2016, GN No.173 of 2016.

Order accordingly



A handwritten signature in blue ink, appearing to read "G.N. Isaya".

**G.N. Isaya**  
**Judge**  
**29/03/2023**