

**IN THE HIGH COURT OF TANZANIA  
CORRUPTION AND ECONOMIC CRIMES DIVISION  
(MOROGORO SUB-REGISTRY)  
AT MOROGORO**

**ECONOMIC CASE No. 3841 OF 2024**

**REPUBLIC**

***Versus***

**ABDURAZAQ HUSSEIN HUMBI**

**JUDGMENT**

*22<sup>nd</sup> February & 1<sup>st</sup> March, 2024*

**OTARU, J.:**

**Abdurazaq Hussein Humbi**, stands charged with the offence of trafficking in narcotic drugs contrary to sections 15(1)(a) and 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(1) and 60(2) of the **Economic and Organized Crime Control Act** [Cap. 200 R.E. 2022].

It was alleged by the prosecution that on 14/04/2022 at Mindu Area, within the District and Region of Morogoro, the accused person trafficked in narcotic drugs to wit, *cannabis sativa* or *bhangi* weighing 113.49 kilograms. The accused pleaded not guilty to the Information and trial process begun.

The prosecution team was headed by Ms. Tully Helela, learned Senior State Attorney. Other prosecution team members were Mr. Fortunatus Maricha and Ms. Kuyunga Yango, both learned State Attorneys. In establishing the case

against the accused, the prosecution called six (6) witnesses and tendered seven (7) exhibits. The witnesses were Fidelis Begumisa Chrizant (**PW1**); PF. 2128 A/Inspector Ally Lipinda (**PW2**); Onesmo Kanuti Bonzo (**PW3**); E8949 D/Sgt Kwilinus (**PW4**); G4086 DC Lifa (**PW5**) and Jamilah Selemani (**PW6**). The exhibits admitted as part of evidence for the prosecution are; Form No. DCEA 009 (**exhibit PE1**); Form GCLA 01 (**exhibit PE2**); sample submission form no. DCEA 001 (**exhibit PE3**); 6 sulphate sacks containing *cannabis sativa* (bhangi) (**exhibit PE4**); seizure certificate-form no. DCEA 003 (**exhibit PE5**); motor vehicle with registration No. T475 AUR, make Toyota Noah, black in colour (**exhibit PE6**) and certified copies of pages from exhibit register (PF16) with entries numbers 273/2022, 287/2022 and 334/2022 (**exhibit PE7**).

On the part of the defense, the accused who was represented by Ms. Kanisia Komba, learned Advocate, testified as DW1 and called two witnesses to reinforce his defense. These witnesses are Boniface Burton Mwasulama (DW2) and Madaraka Shabani (DW3). Neither documentary nor physical exhibits were tendered on behalf of the defense.

At the trial, PW2 testified that on 14/04/2022 at about 0600hrs he received a telephone call from an informant telling him that at Lugono Area within Mvomero District in Morogoro Region, there was a motor vehicle packing narcotic drugs ready to part for Morogoro town. The description of the vehicle was Registration Number T475 AUR, make Toyota Noah, black in colour. After receiving the call, PW2 reported the matter to the RCO who gave his blessings

to follow up on the lead. PW2 was then told that after packing the load, the vehicle departed. PW2 narrated how he drove towards the scene of crime even though he did not have a search warrant. He explained that he proceeded to do so with a view of apprehending the accused, whilst fearing to lose him and the vehicle in case he will be met with any delay.

PW2 together with G.4086 D/Cpl Lifa (PW5) followed on the lead and managed to get hold of the suspected vehicle within Mindu area in Morogoro Region. The vehicle was driven by the accused who stopped it as directed. PW2 procured a passerby, one Onesmo Kanuti Bonzo (PW3) to witness the search as an independent witness. According to PW2, the motor vehicle was searched in the presence of PW3 as well as the accused person, whereby six (6) sacks of dry leaves suspected to be *cannabis sativa* were retrieved from the boot of the vehicle. They labelled the sacks D1 - D6 and issued a seizure certificate (exhibit P5) which was signed by the accused person, PW2, PW3 and PW5. The search and seizure part is corroborated with the testimonies of PW3 and PW5 who gave a similar account of events as PW2. PW2 further testified that within the same morning hours, the six sacks were seized, the accused apprehended and conveyed to Morogoro Central Police Station where he was incarcerated and charged through Case File No. MOR/IR/3016/2022. Exhibit PE4 was placed in the custody and care of E.8949 D/Sgt Kwilinus (PW4).

It was also the evidence of the Government Chemist one Fidelis

Begumisa Chrizant (PW1) that, on 10/05/2022, he went to Morogoro Police Station to take samples of the suspected *cannabis sativa* for analysis and confirmation. He added that the exhibit keeper (PW4) handed over to him the exhibit through Form No. DCEA 001 (exhibit PE3). He weighed the contents of each of the six (6) sacks and got 113.49 kilograms. He then took samples from the sacks for analysis. He then sent back exhibit PE4 to PW4 for safe keeping and custody. The finding of the analysis confirmed the contents to be narcotic drug to wit *cannabis sativa* commonly known as *bhangi*. This was conveyed through the report of the Government Chemist (exhibit PE1).

At the closure of the prosecution's case, the court was of the view that a prima facie case against the accused was established who was subsequently found to have a case to answer. This necessitated the court to invite the accused to defend himself. The accused defended himself on affirmation. He called two witnesses without tendering any exhibits.

The accused categorically denied to have committed the offence of trafficking in narcotic drugs. From the word go he denied his last name being Humbi; any knowledge of the 6 sacks of the narcotic drug (exhibit PE4); or having driven the motor vehicle in question (exhibit PE6). Through his affirmed testimony, the accused stated that on 14/04/2022 he was at a family gathering following a tragic death of his uncle's son who was buried the previous day. While there, he received a phone call from his friend (DW2), who told him that

local police commonly known as *sungusungu* (PW3) told him that his uncle Madaraka Shabani's motor vehicle (exhibit PE6) was apprehended at Mafiga Area. So he and DW2 arranged to meet with PW3 in order to find out what happened. As they went to Mafiga they met PW3 with two police officers who arrested and charged him with the current offence.

DW2, on his part supported the testimony of the accused. He also informed the court that exhibit PE6 belonged to the accused's father one Humbi and the accused was the one driving it. He knew the accused as Abdurazaq Hussein Humbi. Humbi being the name of the accused's father. When the father of the accused (DW3) came to the stand, he identified himself as an uncle and stated that, the father (one Humbi) was farming somewhere in Nachingwea (within Lindi Region). He also stated that the vehicle owner was in Mwanza. He was merely entrusted to manage the vehicle which, about four days prior to the incident, he entrusted it to one Nassoro Ibrahim who disappeared immediately after the incident. During cross examination, DW3 changed the story by stating that he was the father of the accused, the vehicle owner and Humbi was his name.

That was the evidence by the prosecution and the defense in a nutshell. Having considered it, the main issue for determination of the court is *whether the prosecution has proved the case against the accused person beyond reasonable doubt.*

It is trite law that conviction can only be grounded if, and only if, the prosecution makes out a case leading to an *irresistible conclusion* of the guilt of the accused. In so doing, the Prosecution has to conform to the evidential and legal standard of proof, which is *beyond reasonable doubt* (section 3(2)(a) of the **Evidence Act** [Cap. 6 R.E. 2022] is relevant). As such, the accused has merely to cast doubt in the evidence of the prosecution. This position has been pronounced in a number of cases which include **Said Hemed v R** [1987] TLR 117, **Mohamed Said Matula v R** [1995] TLR 3 and **Mswahili v R** [1997] LRT 25, to mention a few. In the case of **Said Hemed** (supra), the Court stated that;

*'the standard of proof applicable in a criminal case ... is one **beyond all reasonable doubt** and that, where the evidence burden shifts onto the accused, it is sufficiently discharged by the accused by merely adducing evidence that casts a reasonable doubt in the prosecution case'.*

On the issue as to *whether the prosecution has proved the case beyond reasonable doubt*, the answer is gathered from the evidence presented by the prosecution through PW1, PW2, PW3, PW4 and PW5. These witnesses give an account on how the accused was apprehended and the narcotic drugs seized, stored and analyzed. These witnesses provided the direct evidence concerning the incident.

As earlier indicated, PW2 testified how at 06.00hrs of 14/04/2022 he received a lead from an informant about a person trafficking narcotic drugs.

He immediately took action. Together with PW5, they followed the lead and managed to apprehend the accused who was driving the motor vehicle with Registration No. 475 AUR, make Noah, black in colour, just as described by the informant. Upon search, the motor vehicle was found to contain 6 sulphate sacks of dry leaves which were all confirmed via a chemical analysis to have been narcotic drugs, to wit *cannabis sativa* weighing 113.49 kgs (exhibit PE1).

Witnesses PW1, PW2, PW3 and PW5 positively identified the six sulphate sacks (exhibit PE4) as the very same that they seized from the vehicle in question. The exhibit keeper (PW4) also identified exhibit PE4 as the very same that was handed over to him for safe keeping on 14/04/2022 on the day it was seized. Save for 19/04/2022 when the exhibit was weighed and on 10/05/2022 when it was taken for chemical analysis by PW1, PW4 had explained how he kept the exhibit until 21/02/2024, the day it was admitted in court.

The prosecution's case having been established. The next question that one may ask, is whether the witnesses can be trusted or otherwise. In the landmark case of **Goodluck Kyando v. Republic** (2006) TLR 363, the Court of Appeal of Tanzania held that; -

*'It is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness'.*

In short, every witness is to be considered credible witness unless there are good and cogent reasons for not doing so. Credibility of a witness may be

ascertained in two ways. One being coherence of witness testimonies and second one can be from the demeanor of a witness. In the case at hand, the witnesses' testimonies are consistent and coherent. At no point in time during trial was credibility of any of the witnesses shaken in any way. As a result, I do not hesitate to state that I find all the witnesses for the prosecution to be credible.

Moving forward, I also considered the legality or otherwise of the search of exhibit PE6 and the resultant seizure. Search and seizure are governed by the **Criminal Procedure Act** [Cap 20 R.E. 2022].

The general rule is that search of the suspect or premises has to be authorized through a search warrant. Section 38(1) of the **CPA** provides for a search warrant to be issued where search is not an emergency search. Under exceptional circumstances however, search may be executed in the absence of a warrant. See the case of **Maluqus Chiboni @Silvester Chiboni and Simon v. Republic**, Criminal Appeal No. 8 of 2011 (CAT Dodoma), (unreported), where the Court discussed the relevant **CPA** provisions as follows; -

*'Sections 38 and 40 require, generally, that a warrant be issued to a police officer or other person authorized before such officer or person executes the search. However, under exceptional circumstances, a police officer may conduct a search and seizure without warrant. Such circumstances are listed under sections 41 and 42 of Cap*

*20. Relevant to this case are the provisions of sections 42(1) (b) of Cap 20.'*

An emergency search may be carried out without a search warrant as envisaged under section 42(1)(b)(ii) of the **CPA**. This legal position has been widely emphasized in various Court of Appeal decisions, such as in **Ayubu Mfaume Kiboko and another v. Republic**, Criminal Appeal No. 694 of 2020 (CAT Dsm); **DPP v. Doreen John Mlemba**, Criminal Appeal No. 359 of 2019 (CAT Dsm) and **Marceline Koivogui v. R**, Criminal Appeal No. 469 of 2017 (CAT Dsm), (all unreported). In the case of **Marceline Koivogui**, the Court was of the following considered view:-

*'in addition, in the present case, the circumstances in which the search and seizure were effected, in our considered view, befit emergency situation as envisaged by provisions of section 42(1) of the CPA.'*

According to PW2 and PW5, circumstances of search in the case at hand suggest there to have been an emergency situation. Going through the testimony of PW2, who was the arresting officer, there is no doubt that the circumstances of the search befit an emergency situation covered under section 42(1)(b)(ii) of the **CPA**. I say so because I am convinced by the prosecution that, action had to be taken immediately as the object of search was a moving vehicle and there was no quick access to the warrant without undue delay.

Similar situation was experienced in the case of **Wallenstein Alvares**

**Santillan v. Republic**, Criminal Appeal No. 68 of 2019, where the Court of Appeal of Tanzania (at Dsm) (unreported) concluded the issue to the effect that search conducted in an emergency situation was legal. Since the instant case falls within an emergency situation, it is also concluded that the search in question was legally conducted. In view of the forgoing, the answer given to this question is also in the affirmative.

From the foregoing, the prosecution through PW1 and exhibit PE1 have successfully established that exhibit PE4 was narcotic drug *cannabis sativa* or *bhangi*. They have as well, through PW2, PW3 and PW4 have successfully proved that the accused was the person driving exhibit PE6 in the morning of 14/04/2022. They have as well proved the legality of the search of exhibit PE6, seizure of exhibit PE4 and established how the chain of custody of exhibit PE4 was maintained, removing any possibility of the same being tempered with.

Even though DW1 and his two witnesses desperately tried to shake the prosecution's evidence but in reality DW2 and DW3 corroborated the prosecution's evidence due to the fact that they all narrated before this court that the accused person is the one to whom exhibit PE6 was entrusted. DW3, unsuccessfully tried to convince the court that the *father* of the accused was somewhere in Nachingwea. He came clean during cross examination when he felt the heat of the fire and admitted that the accused is indeed his own son, *Humbi* is their family name and exhibit PE6 is his vehicle which he handed over

to his son for use. That being said, none of the defense witnesses have managed, not even slightly to shake the evidence of the prosecution thus I have no reason to doubt it or disbelieve any part of it.

In conclusion, it is my conviction that the prosecution has proved beyond any reasonable doubt, the case against the accused ABDURAZAQ HUSSEIN HUMBI. I am thus convinced that the accused person committed the offence with which he is charged. I therefore, convict him for trafficking in narcotic drugs in contravention of sections 15(1)(a) and (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(1) and 60(2) of the **Economic and Organized Crime Control Act** [Cap. 200 R.E. 2022].

It is so ordered.

**DATED** at **DAR ES SALAAM** this 1<sup>st</sup> day of March, 2024.




  
**M.P. Otaru**  
**JUDGE**

## SENTENCE

I have heard the submissions by both parties herein on the sentence. While I take note of the fact that the convict is a first offender, I also take cognizance of the fact that the law has provided stern sentence for such offenders with a minimum sentence of 20 years in prison to be imposed upon conviction, the gravity of the offence of trafficking narcotic drugs, that the convict has been in remand for almost 2 years and other factors as submitted by the two counsel.

Consequently, I sentence the accused person to twenty-five (25) years imprisonment.



  
**M.P. Otaru**  
**JUDGE**  
**01/03/2024**


## ORDER

Simultaneous with imposition of the sentence of imprisonment, it is hereby ordered, as follows:-

1. That the six sacks of narcotic drugs (Exhibit PE4) be destroyed without any undue delay and that such destruction should involve the relevant law enforcement agencies.
2. That motor vehicle with registration No. T475 AUR make Toyota Noah (exhibit PE6) be released and handed to its registered owner as there is no evidence that links him with the charged offence.

It is so ordered.



  
**M.P. Otaru**  
**Judge**  
**01/03/2024**

**COURT:** Judgment is delivered virtually in the presence of Mr. Shabani Kabelwa, learned State Attorney for the Republic, Ms. Kanisia Komba, learned Advocate for the accused person and the accused person Abdurazaq Hussein Humbi. Also present were Ms. Sophia Minja (JLA) and Mr. Juma Maiga (RMA).

The right of appeal against the conviction, sentence and the consequential orders is duly explained to the parties.



*M. P. Otaru*  
**M.P. Otaru**  
**JUDGE**  
**01/03/2024**