

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

AT ARUSHA

ECONOMIC CASE NO. 7 OF 2023

REPUBLIC

VERSUS

KAANAELI NDIKAUSIA AKYOO @ KAANAEL LEKAUSYA

AKIOO @ KAANAEL AKYOO

JUDGMENT

21st December 2023 & 5th February 2024

KISANYA, J.:

The accused person, Kaanaeli Ndikausia Akyoo, also known as Kaanael Lekaushya Akioo or Kaanael Akyoo, is charged with two counts. In the first count, he faces the offence of trafficking in narcotic drugs, contrary to section 15(1)(a) and 3(iii) of the Drug Control and Enforcement Act [Cap. 95 R.E. 2019] (the DCE Act) read together with paragraph 23 of the First Schedule and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019]. It is alleged that on August 19, 2020, at Kisimiri Chini village within Arumeru District in the Arusha Region, the accused person was found trafficking

in narcotic drugs namely, cannabis sativa, commonly known as "bhangi," weighing 102 kilograms, an act that contravenes the law.

In the second count, the accused person is charged with possession of prohibited plants under section 11(1)(b) of the DCE Act. The particulars of the offence state that, on the date and at the location mentioned in the first count, he was found in possession of 58.2 kilograms of prohibited cannabis seeds for production of cannabis plants, commonly known as "bhangi."

Before this Court, the Republic was represented by Ms. Grace Majikenya, Mr. Godfrey Nuhu, Mr. Donald Mahona and Ms. Belinda Lwakatare, learned State Attorneys; whilst the accused person received legal representation from Mr. Vicent Stewart Minja, a learned advocate. Their dedication, commitment, and cooperation in the pursuit of justice are highly appreciated.

To establish its case against the accused person, the prosecution, called in six witnesses to testify. These witnesses are, F2467 D/SGT Henry (PW1), Eva Paul Laswai (PW2), Erasto Mbalamwezi Laurance (PW3), WP 7631 D/CPL Zuweni (PW4), Insp. Brown (PW5) and Emmanuel Paul Nnko (PW6). In addition, the prosecution tendered thirteen exhibits which were admitted in evidence. These exhibits include, register book – PF 16 (Exhibit P1), seven (7) empty sulphate bags (Exhibit P2), certificate of photographs/moving picture (Exhibit

P3), six (6) still pictures (Exhibit P4), certificate of destruction of seeds (Exhibit P5), certificate of destruction of dry leaves (Exhibit P6), samples submission Form No. DCEA 001 (Exhibit P7), sample receipt notification form (Exhibit P8), Government chemist analyst report (Exhibit P9), search order (Exhibit P10), sampling inventory form for dry leaves (Exhibit P11), sampling inventory form for dry seeds (Exhibit P12) and inventory of seized exhibit for disposal (Exhibit P13).

Briefly stated, the prosecution evidence reveals that on the evening of August 18, 2020, PW5 Insp. Brown and other officer of the Drugs and Enforcement Authority (DCEA) were on an operation against trafficking in narcotic drugs in Arusha Region. He received information from an informant indicating that one Kanael, was in possession of narcotic drugs at his residence in Karafia, Kisimiri area within Arumeru District. Acting on this information, PW5 informed other officers from DCEA and police officers who were with him. He further proceeded to the Commanding Officer In-charge of Usa River Police Station, who issued a search order.

On the next day, August 19, 2020, PW5 and other officers went to Karafia, Kisimiri chini area. He met with the informer who led them to the residence of the accused person. The compound had two houses. PW5 and his team surrounded both houses. He secured the presence of PW6 Emmanuel John Nnkoo, a village executive officer of Kisimiri chini village, as a witness to the

search. As PW6 consented to be the witness to the search, PW5 knocked on the main house, whereby one male person opened the door. He was apprehended by PW6. Upon being inquired, that person stated that his name was Kanael Akyoo. He also consented to the search of his house. Before conducting the search, the searching officers, namely PW5 and Coplo Isaya, and the independent witness were inspected in the accused person's presence, ensuring they possessed nothing illegal.

Subsequently, they proceeded inside the main house. They found nothing, prompting them to move to the small house, where they discovered six sulfate bags containing substances. The said sulfate bags were taken outside the house. PW5 found dry leaves suspected to be narcotic in the sulfate bags, which he labeled A, B, C, D, and F. As for the sulfate bag labeled E, dry seeds suspected to be narcotic drugs were found therein. In addition, apart from dry leaves suspected to be narcotic drugs, a small sulfate bag containing dry seeds suspected to be narcotic drugs was found in the sulfate bag labeled B. PW5 labeled the said small sulfate bags as B1. He also inscribed the case number DCEA/AR/IR/03/2020 and included the name and signature of the seizing officer, accused person, and PW6 on each sulfate bag. At that point, PW5 seized these bags via a certificate of seizure, signed by him, PW6, and the accused person.

The search order and certificate of seizure were admitted in evidence and marked as Exhibit P10.

Subsequent thereto, the accused person together with the seized bags was taken to the designated area for other processes. PW5 communicated with other stakeholders who went to the designated area. These stakeholders included the chemist (PW3 Erasto Mbalamwezi Laurance), officer from Forensic Bureau (PW2 Eva Paul Laswai), magistrate by the name of Salome Mshasha, State Attorney, and environment officer.

On the arrival of the stakeholders, PW3, who went with a weighing scale, weighed the substance in each sulfate bag. The net weight of dry leaves in the sulfate bags labeled A, B, C, D, and F totaled 102 kilograms, whereas the dry seeds in the sulfate bags labeled B1 and E had a net weight of 58.2 kilograms. After the weighing process, PW5 extracted two samples from each sulfate bag. Each sample was packed in its envelope. These envelopes were labeled A and A1, B and B1, B1(i) and B1(ii), C and C1, D and D1, E and E1; and F and F1 for the samples extracted from the bags A, B, B1, C, D, E, and F, respectively. PW5 went on to fill the sampling inventory forms, which were also signed by the accused person and certified by the magistrate. Five (5) sampling inventory forms for dry leaves suspected to be cannabis sativa and two (2) sampling

inventory forms for dry seeds suspected to be narcotic drugs were collectively admitted evidence as Exhibits P11 and P12, respectively.

Further to the foregoing, PW5 applied before the magistrate seeking disposal of the remaining substances seized from the accused person. He completed an inventory of seized exhibits for disposal in which the order for disposal of exhibits was issued by the magistrate. To substantiate this evidence, PW5 tendered the inventory of seized exhibit for disposal, which was admitted as Exhibit P13.

In view of the foregoing order, the remaining substances seized from the accused person were destroyed through burning in the presence of the magistrate, accused person, and other stakeholders. After the disposal of the substances suspected to be narcotic drugs, PW5 filled two certificates of destruction, which were also signed by the magistrate, PW3, and other stakeholders in attendance as required by the law. The certificates of destruction of dry leaves and seeds suspected to be narcotic drugs were tendered and received in evidence as Exhibits P5 and P6, respectively.

PW2 documented through photographs all the processes from weighing, sampling to the destruction of exhibits. The photographs taken by PW2 and the certificate of photographs were certified by the magistrate. Six still pictures were

collectively admitted in evidence as Exhibit P4, while the certificate of photograph Form No. CDEA 002 was received as Exhibit P3.

Following these events, the accused person along with 14 envelopes containing samples and 7 empty sulfate bags was taken to Usa River police post. PW5 handed the samples and empty sulfate bags over to the exhibit keeper, namely D/SGT Henry (PW1), for custody. PW1 registered the said exhibits in the court exhibit register PF-91(Exhibit P1) as entry number 97/2020, which was also signed by PW5. He then stored the exhibits in the exhibit room.

On the next day, PW4 collected the 14 envelopes of samples from PW1. She dispatched them to the GCLA- Arusha for analysis. At the GCLA, the samples were received by PW3, who registered them as Lab. No. NZL 607/2020. The handing over of samples was documented vide the sample submission form (Exhibit P7) and sample receipt notification form (Exhibit P8). Following the analysis by PW3, the samples were identified as "tetrahydrocannabinol," a chemical found in the cannabis plant. Based on these findings, PW3 signed a report stating that the samples were narcotic drugs, namely cannabis sativa, commonly known as "bhangi." The said report was admitted in evidence as Exhibit P9.

At the same time, the seven (7) empty sulfate bags remained in the custody of PW1 until he produced them in court. They were received in evidence and marked as Exhibit P2, collectively.

Having considered the evidence adduced by the prosecution, the Court made a ruling that the prosecution had established a prima facie case requiring the accused person to give his evidence. Upon being invited, the accused person opted to give his evidence under oath without calling any witness or tendering any exhibit to supplement his oral testimony.

The accused person, who testified as DW1, denied the charges. He recalled that on the fateful day (19/08/2020), around 3.00 am, a person who introduced himself as a police officer knocked on the door to his house. He asserted that initially, he refused to open the door unless the presence of the village chairman is procured. However, he decided to open the door after noticing that the police officers were breaking the same. DW1 testified that the police officer informed him that they had received a tip that he was in possession of cannabis sativa. It was his evidence that the police officers found nothing illegal in the house where he was found. He went on asserting that they proceeded to another house which was used to keep goats. He told the Court that the said house was surrounded by police officers and that he was threatened to be lost if he could not show them cannabis sativa.

DW1 contended that the police officers started to pack sulfate bags inside the said house and later on told that the sulfate bags were his. It was his further evidence that he was ordered to sign a document and write his name on each sulfate bag. The accused person testified that he was taken to a place where sulfate bags containing cannabis sativa were packed. He stated that he was ordered to stand in front of the sulfate bags and taken to that effect. He further stated that the substances in the sulfate bags were weighed and destroyed through burning. Thereafter, he was taken to the police station and later on to the court where he was charged with the offence of trafficking in narcotic drugs.

Reacting to the evidence of PW6, the accused person asserted that he (PW6) arrived at the scene around 11.00 am after noticing. He stated that PW6 was not known to him before the incident. He insisted that he knew nothing about the dry seeds and leaves subject to this case. It was his contention that he did not commit the two counts laid against him. He urged the Court to find that the case was planted against him.

After due consideration of the evidence from both parties, the major issue is whether the prosecution has established its case beyond all reasonable doubts. This issue is determined by considering whether the elements of both counts were duly proved.

The first count, trafficking in narcotic drugs, is established by section 15(1)(a) and (iii)(c) of the DCE Act, which stipulates two ingredients: *one*, that the accused person trafficked in narcotic drugs, and *two*, where the narcotic drugs involved are cannabis sativa, as in the present case, that, the weight of cannabis sativa exceeded 50 kilograms. However, for the offence committed from September 20, 2021, the weight of narcotic drugs must exceed 100 kilograms as per section 15(iii)(c) of the DCE Act as amended by section 18 of the Written Laws (Miscellaneous Amendments) (No. 5) Act No. 9 of 2021.

In view of the foregoing position of law, the particulars offense, and the evidence from both sides, the issue of whether the first count was proved is determined by considering the following issues:

- 1. Whether the sulfate bags containing dry leaves and seeds suspected to be cannabis sativa were seized from the accused person's house.*
- 2. Whether the substances in the sulfate bags seized from the accused person's house were cannabis sativa weighing 102 kilograms.*
- 3. Whether the chain of custody was maintained.*

I prefer to start with the first issue, whether the sulfate bags containing dry leaves suspected to be cannabis sativa were seized from the accused person's house. PW5 testified that he received information from an informant that the accused person was in possession of narcotic drugs at his residence. Following that information, he obtained a search order and proceeded to the accused

person's house, which was shown to him by the informant. PW5 told the court that he enlisted the presence of PW6 as a witness to the search. According to PW5 and PW6, the accused person was found in the main house and he consented to the search, whereby nothing illegal was found therein.

It was their further evidence that, six sulfate bags containing suspected substances were found in the second house. Pursuant to PW5, the door to the house found with the said sulfate bags was opened by the accused person. PW5 and PW6 further adduced that the sulfate bags were taken outside the house. Upon opening them, five sulfate bags which were labeled A, B, C, D, and F were found with dry leaves and one sulfate bag which was labeled E contained dry seeds. It was their further evidence, a small bag containing dry seeds was found in the sulfate bag which was labeled B whereby PW5 labeled the same as B1. It is in evidence that, the said sulfate bags containing substances suspected to be cannabis sativa were seized via the certificate of seizure (Exhibit P10) which was signed by the seizing officer (PW5), accused, independent witness (PW6), and the accused person.

In his defence, the accused person does not dispute that his two houses were searched on the material date. However, he contended that the sulfate bags were brought and packed into his house by the police officers. Also, his

contention that PW6 arrived at the scene around 11.00 am suggested that the latter (PW6) did not witness the search and seizure.

Having weighed the evidence from both parties, I am not persuaded by the accused person's defence that the sulfate bags were brought and packed into his house by the police officers. In terms of the trite law, a person who fails to cross-examine a witness on a certain matter will be stopped from asking the court to disbelieve what the witness testified against him. I am bolstered, among others, by the case of **Nyerere Nyague vs R**, Criminal Appeal No. 67 of 2010, (unreported)] in which the Court of Appeal held:

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

See also the case of **Amos Jackson vs. R**, Criminal Appeal No. 439 of 2018 (unreported) where the Court of Appeal observed that failure to cross-examine a witness on an important matter signifies the truth of the witness's evidence.

In the present case, PW5 and PW6 who are crucial witnesses to the search and seizure were not cross-examined on the defence that the sulfate bags were brought to and packed in the accused person's house by the police officers.

Further to this, the defence evidence that PW6 arrived at the scene around 11.00 AM was not put to PW5 or PW6 during cross-examination. Being guided by the above-stated position, the accused person is stopped from asking this Court to disbelieve PW5 and PW6 who testified under oath that the sulfate bags containing substances suspected to be narcotic drugs were found and seized in the accused person's house.

Besides, the accused person does not dispute that he signed a certificate of seizure (Exhibit P10) in which seven 7 sulfate bags containing substances suspected to be narcotic drugs were listed. Faced with an akin situation in the case of **Song Lei vs The Director of Public Prosecutions**, Criminal Appeal No 16A of 2016 and No. 16 of 2017 (unreported), the Court of Appeal observed that:

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

Applying the above-stated position to the present case, it is clear that the accused person admitted that the seven sulfate bags containing substances suspected to be narcotic drugs were found and seized in his house when he signed Exhibit P10. There is no evidence to suggest that the accused person was forced to sign the same. I have noticed that PW5 and PW6 contradicted each other on whether the accused person's wife was present on the material date.

However, it is my considered view that the said contradiction is minor. It does not go to the root of the issue whether the sulfate bags containing substances to be narcotic drugs were found inside the accused person's house. I am supported by the case of **Marmo Slaa Hofu & 3 Others vs. R**, Criminal Appeal No. 246 of 2011 (unreported)) where the Court of Appeal emphasized that:

"It is therefore true that the existence of contradictions, inconsistencies in the evidence of a witness is a basis for a finding of lack of credibility; but the discrepancies must be serious, and must concern matters that are relevant to the issues being adjudicated, to warrant an adverse finding."

Guided by the stated principles, I hold the view that the contradiction in the testimony of PW5 and PW6 regarding the presence of the accused person's wife is irrelevant to the issue under consideration. On the contrary, I find PW5 and PW6 to be credible witnesses. As previously stated, their evidence remained unchallenged during cross-examination. Additionally, the accused person admitted to having no grievances with the police officers and the independent witness (PW6) prior to the incident. I discern no plausible reason for PW5 and other officers would conspire against an individual unknown to them before the incident.

In these circumstances, I am content that, based on the evidence of PW5, PW6, and Exhibit 10, the sulfate bags containing dry leaves suspected to be

cannabis sativa were indeed seized from the accused person's house. Thus, the first issue is affirmed in the affirmative.

Having resolved the first issue in the affirmative, the next consideration is whether the substances in the sulfate bags constituted narcotic drugs, namely cannabis sativa weighing 102 kilograms. It is an established legal principle, as underscored in the case of **Omary Said @Athumani vs R**, Criminal Appeal No. 58 of 2022, CAT at Tanga (unreported), that the authority to weigh and analyze substances suspected to be narcotic drugs is vested in the Government Chemist. Citing its previous decision in **Charo Said Kimillu vs. R**, Criminal Appeal No. 111 of 2015 (unreported), the Court of Appeal held:

"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 our case, PW3 is a chemist analyst from the GCLA. He affirmed under oath that he went to the scene where he weighed the substances in the sulfate bags alleged to have been seized from the accused person. His testimony is corroborated by PW4 and PW5. According to PW2, PW3, PW4, and PW5, the exhibits were weighed in the presence of the accused person and other stakeholders, including the magistrate. PW3 testified that the net weight of dry leaves in sulfate bags labeled A, B, C, D, and F was 102 kilograms, whereas the

dry seeds in the sulfate bags labeled B1 and E had a net weight of 58.2 kilograms.

It is also evident that, after the weighing process, PW5 extracted samples from each sulfate bag. These samples were packed in envelopes labeled A and A1, B and B1, B1(i) and B1(ii), C and C1, D and D1, E and E1; and F and F1 for the samples extracted from bags A, B, B1, C, D, E, and F, respectively. This evidence is further supported by the sampling inventory forms (Exhibits P11 and P12), which were signed by the accused person and certified by the magistrate.

PW3 additionally testified that, on the next day (20/08/2020), he received 14 samples labeled A and A1, B and B1, B1(i) and B1(ii), C and C1, D and D1, E and E1; and F and F1 from PW4 for analysis. As an expert witness, PW3's duty was to enlighten the court on the necessary scientific criteria for testing the accuracy of his conclusion, enabling the court to arrive at its own judgment. [See the case of **Sylvester Stephano vs R**, Criminal Appeal No. 527 of 2016, CAT at Arusha (unreported)].

In his testimony, PW3 stated that he registered the samples as Lab. No. NZL 607/2020. Concerning the analysis of samples PW3 testified that the analysis began with the *duquenois* test in which tetrahydrocannabinol, a chemical found in leaves of the cannabis plant, was identified. He further stated

that, upon subjecting the samples to microscopic examination test, trichomes structure found in leaves of the cannabis plant was detected in the samples containing dry leaves. Simultaneously, the structure of the tortoise shell pattern, typically found in the seeds of cannabis sativa, was identified in the samples containing dry seeds. Based on these findings, PW4 prepared and signed a Government Chemist Analyst Report (Exhibit P9), which was admitted in evidence without objection from the defence side.

Pursuant to Exhibit P9, the analysis confirmed that the dry leaves and seeds were narcotic drugs, namely, cannabis sativa. It was further asserted in Exhibit P10 that the weight of dry leaves and seeds of cannabis sativa was 102 kilograms and 58.2 kilograms, respectively.

I find no evidence contradicting the evidence that the substances suspected to be narcotic drugs were weighed, samples extracted therefrom, and analyzed by PW3, who confirmed that they were indeed cannabis sativa. Moreover, the accused person did not cast doubt on the evidence presented by PW3 and supported by Exhibit P9. Considering that seeds are excluded in the definition of the word "cannabis" as outlined in section 3 of the DCE Act, I am of the opinion that the prosecution has proved that the substances in the sulfate bags seized were narcotic drugs, namely, cannabis sativa weighing 102 kilograms.

Next for determination is the third issue of whether the chain of custody was maintained. This issue is crucial in cases involving exhibits that move from one point to another. In the case of **Allan Duller vs. R**, Criminal Appeal No. 367 of 2019 (unreported), it was held that the evidence on the chain of custody eliminates the allaying fears about the possibilities of the exhibit tempering. Given this context, it is the prosecution's duty to establish the movement of exhibits from the moment of their seizure, through the investigation process, up to their production in court. The significance of maintaining a well-documented paper trail from seizure to production in courtroom was underscored in the case of **Paulo Maduka and Four Others vs. R**, Criminal Appeal No. 110 of 2007 CAT (unreported). The Court of Appeal stressed the crucial role of proper documentation in ensuring the integrity of the exhibit's chain of custody.

However, it is now settled position of law that, the chain of custody can be substantiated not only through a paper trail but also through direct oral testimony given by reliable witnesses. Thus, the absence of documentation does not automatically result in the failure of the chain of custody test. The court must take into account various factors, including whether the nature of the exhibit makes it susceptible to easy changes of hands. This legal stance has been reiterated in a number of cases, such as **Chacha Jeremia Murimi and 3**

Others vs R, Criminal Appeal No. 551 of 2015 (unreported) in which the Court of Appeal held 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 SamweI @ 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 essence, our legal framework recognizes the flexibility of proving the chain of custody, allowing for documentation or oral testimony to play integral role. As indicated herein, this approach ensures that the overall reliability and integrity of the chain of custody are assessed comprehensively, taking into account the unique characteristics of each case.

In the present case, the prosecution has presented both documentation and oral evidence regarding the chain of custody of the cannabis sativa and prohibited cannabis seeds seized from the accused person as follows:

First, PW5 and PW6 testified that, the seizure involved the seizure of five sulfate bags containing dry leaves suspected to be cannabis sativa from the

accused person's residence. This entire process was thoroughly documented in the Certificate of Seizure (Exhibit P10), which was signed by PW5, PW6, and the accused person.

Second, the seizing officer (PW5), took proactive steps before the seizure by appropriately labeling the sulfate bags as A, B, B1, C, D, E to F. This labeling included inscribing the case number DCEA/AR/IR/03/2020 and writing the respective names and signatures of the seizing officer, accused person, and PW6 on each sulfate bag. The accused person, during his defence, acknowledged that he was asked to sign the sulfate bags. His assertion that he refused to do so was not brought to the attention of PW5 and PW6. Consequently, such claims cannot be considered at this stage. Furthermore, the fact that the sulfate bags were labeled as described was consistently documented in Exhibit P10, thereby ensuring a clear identification of the substances seized from the accused person.

Third, PW5 provided oral testimony affirming that the seized bags were subsequently transported to a designated area for further processes, including weighing, sampling, and eventual destruction. This crucial phase in the chain of custody was not contested by the accused person, who confirmed that the sulfate bags were taken to the location where he found other substances suspected to be cannabis sativa. PW5 further detailed that stakeholders, including PW2, PW3, PW4, and a magistrate, were present during the weighing

and sampling activities. This adherence to the legal provisions, particularly section 36 of the DCE Act and regulation 16 of the Drug Control and Enforcement (General) Regulations, 2016 (the Regulations), was essential in maintaining transparency during the procedures.

Fourth, it is deduced from the testimony of PW2, PW3, PW4, and PW5 that, the substances suspected to be narcotic drugs underwent a detailed process. PW3 conducted the weighing of the substances, and concurrently, PW5 extracted two samples from each sulfate bag. Simultaneously, PW2 complied with the requirement of taking photographs, as stipulated by section 36(3)(b) of the DCE Act. The evidentiary record also confirms that each sample obtained was packed and sealed within its designated envelope. The prosecution witnesses clarified that the envelopes, containing samples, were distinctly labeled A and A1, B and B1, B1(i) and B1(ii), C and C1, D and D1, E and E1, and F and F1, aligning with the specific bags denoted A, B, B1, C, D, E, and F. This labeling practice ensured a clear and organized identification of the samples throughout the subsequent processes.

Apart from the oral testimonies of PW2, PW3, PW4, and PW5, the process of weighing and sampling was comprehensively documented. This documentation includes, Sampling Inventory Forms (Exhibits P11 and P12), still picture (Exhibit P4) and a Certificate of Photographs (Exhibit P3) were signed the

magistrate who was present during the weighing and sampling procedures. Additionally, Exhibits P7 and P8 establish a clear link between the substances weighing and the extraction of samples, tying them to the sulfate bags labeled A, B, B1, C, D, E, and F, as well as Case No. DCEA/AR/IR/03/2020.

Thus, the said comprehensive evidentiary framework confirms that the exhibits seized from the accused person underwent proper weighing and sampling procedures. As held in the preceding issue, the accused person failed to challenge or cast doubt on the evidence surrounding these processes. Consequently, the credibility and reliability of the evidence related to the weighing and sampling of the seized substances remain intact, reinforcing the prosecution's case

Fifth, it is undisputed that the cannabis sativa seized from the accused person was not tendered in court. As elucidated in the testimonies of PW2, PW3, PW4, and PW5, the dry leaves and seeds suspected to be cannabis sativa were destroyed after the weighing and sampling procedures. This course of action aligns with the provisions of section 36(1), (2), and 3(a) of the Drug Control and Enforcement Act (DCE Act) which confers the DCEA with the authority to dispose of narcotic drugs. The exercise of such power involves a careful consideration of various factors, surrounding the hazardous nature of narcotic drugs,

susceptibility to theft, potential substitution, and limitations in proper storage space, among others.

To comply with this responsibility, the seizing officer handling the narcotic drugs must prepare an inventory which shows crucial details, including the description, quantity, mode of packing, marks, and numbers associated with the narcotic drugs. Importantly, the inventory should offer particulars regarding the identification of the narcotic drugs, packaging details, country of origin, and any other essential information that contributes to establishing the identity of the seized substances. To complete this process, the seizing officer is mandated to seek certification of the inventory's correctness from a magistrate.

In the current case, evidence of PW5 shows that, he adhered to these legal requirements. He testified that he applied before the magistrate, seeking authorization for the disposal of the substances seized from the accused person. Subsequently, PW5 compiled an inventory of the seized exhibits for disposal (Exhibit P13) made under section 36(2) of the DCE Act, leading to the issuance of the order for destruction. This order, documented in Exhibit P13, attests to the magistrate's approval for the destruction of the exhibits seized from the accused person.

It follows that the disposal of the narcotic drugs, namely cannabis sativa, was carried out with the necessary legal oversight and authorization. The certificates of destruction (Exhibits P5 and P6), still photographs (Exhibit P4), and certificate of photographs (Exhibit P3) further substantiate the proper disposal of the narcotics through burning. Consequently, despite the absence of the actual cannabis sativa in court, the prosecution has established the lawful and documented destruction of the seized exhibits in accordance with statutory requirements.

Sixth, the court received evidence indicating that, following the destruction of the seized exhibits, PW5 retained control over the envelopes containing samples and seven empty sulfate bags until he handed them to the custody of the exhibit keeper (PW1), at the Usa River Police Post. This transfer was documented in the court exhibit register PF16 (Exhibit P1), bearing the signatures of both PW1 and PW5. According to PW1, the said exhibits were duly registered in PF-91 under entry number 97/2020 and securely stored in the exhibit room.

Seventh, it is deduced from the testimony of PW1 and PW4 that, on the 20th of August 2020, PW1 handed over 14 envelopes of samples to PW4 for submission to GCLA in Arusha. The process of handing over the samples between PW1 and PW4 was recorded in Exhibit P1. The evidence further reveals

that, upon receiving the samples, PW4 dispatched them to the GCLA in Arusha for laboratory testing. The formal transfer of the samples from PW4 to PW3 was corroborated by documentary evidence, including the sample submission form (Exhibit P7) and Sample Receipt Notification form (Exhibit P8). Additionally, PW3, upon receiving the samples, officially registered them as Lab. No. NZL 607/2020.

Eighth, the subsequent analysis as per evidence of PW3 and outlined in Exhibit P9, was explicitly based on the samples which PW3 received from PW4. This sequential documentation and procedural adherence, from the destruction of exhibits to the submission, transfer, and analysis of samples, further fortify the prosecution's case.

Tenth, regarding the seven empty sulfate bags, PW1 attested under oath that they remained in his custody until he produced them in this court, where they were collectively admitted as Exhibit P2.

I am mindful of the established legal principle emphasized in the case of **Goodluck Kyando v. R** [2006] TLR 363, which asserts that every witness is entitled to credence, and his testimony should be believed and accepted unless there are good and cogent reasons for not doing so. After due consideration of the evidence presented by both the prosecution and the defense, I find no compelling reasons to discredit the testimonies of the prosecution witnesses in

this case. On the contrary, I find their testimonies as credible, consistent, and coherent. As demonstrated in the preceding analysis, their oral evidence aligns with the documents detailing the process of seizing narcotic drugs (cannabis sativa) from the accused person, the subsequent analysis conducted by PW3, and the destruction of the remaining narcotic drugs after obtaining the court's order. There is no evidence suggesting the possibility of tampering with the narcotic drugs and the samples analyzed by the GCLA. Moreover the defence did not raise any doubts about the credibility of the prosecution's oral testimonies and the documentary evidence.

Consequently, I hold the humble view that there is no evidence indicating a break in the chain of custody. This conclusion is reinforced by the fact that the documentary evidence (exhibits) related to the chain of custody was not objected to during its admission, and therefore, it is deemed to have been admitted by the accused person. [See the case of **Anna Moises Chissano vs. R**, Criminal Appeal No. 273 of 2019 (unreported)]. It is clear that the exhibits in this case were subject to a meticulous chain of custody, ensuring their integrity. The third issue is resolved in the affirmative.

Therefore, based on the totality of the evidence, I am convinced that the first count, alleging trafficking in narcotic drugs, has been established beyond reasonable doubt.

As for the second count, which charges the accused person with possession of prohibited plants under section 11(1)(b) of the DCE Act, it is crucial to note that the said provision criminalizes the possession or supply of seeds in production of drug. The term "production" is defined in section 2 of the DCE Act as "the separation of opium, poppy straw, coca leaves, cannabis, or khat from the plants from which they are obtained."

In view of the particulars offence, the prosecution was required to establish that the accused person was found in possession of 58.2 kilograms of cannabis seeds for the production of cannabis plants. Despite the omission to state whether the seeds were for production of drugs, the evidence presented by the prosecution demonstrates that the seeds in question had indeed been separated from the leaves, which were proven to be narcotic drugs, namely cannabis sativa. Therefore, I hold the view that the accused person was not prejudiced by the discrepancy in the information.

In line with the findings related to the first count, where the prosecution successfully established the trafficking of narcotic drugs, it has been demonstrated that two sulphate bags containing seeds suspected to be cannabis were seized as Exhibit P10. According to PW3, the seeds weighed 58.2 kilograms, and PW5 extracted samples as evidenced in Exhibit P7. Subsequently,

the samples were submitted to the GCLA, where PW3's analysis confirmed them to be seeds of cannabis sativa, as illustrated in Exhibit P9.

Considering the maintained chain of custody for both the dry leaves and seeds seized from the accused person, I am of the opinion that the prosecution has successfully proved the second count of possession of prohibited plants.

I am alive to the established principle that places the onus on the accused person to raise doubt on the prosecution case. In this case, the accused person contended that the sulfate bags containing substances believed to be narcotic drugs were brought to his house by the police officers. As previously resolved, the accused person failed to put that issue to the seizing officer and independent witness. Additionally, a certificate of seizure (Exhibit P10), bearing the accused person's signature, implies his acknowledgment of being found with substances suspected to be cannabis sativa. This is so when it is considered that the accused person did not object to admission of the said exhibit. Thus, it is clear that the defence side did not effectively raise doubt on the prosecution's case.

In the final analysis, I affirm that the prosecution has proved its case beyond reasonable doubt against the accused person. Consequently, I find the accused person guilty on both counts and I hereby convict him promptly for the offences of trafficking in narcotic drugs under section 15(1)(a)(2) and (3)(iii) of

the DCE Act, read together with paragraph 23 of the 1st Schedule, and sections 57(1) and 60(2) of the EOCCA, as well as possession of prohibited plants under section 11(1)(b) of the DCE Act.

It is so ordered.

Dated this 5th day of February, 2024.


S.E. KISANYA
JUDGE
05/02/2024

Court: Judgment delivered through virtual court system on this 5th day of February, 2024 in the presence of Ms. Belinda Rwakatare, learned State Attorney, Mr. Fridlin Bwemelo, learned advocate holding of Mr. Vicent Stewart Minja, defence counsel and the accused person.


S.E. KISANYA
JUDGE
05/02/2024

SENTENCE

I have considered the respective aggravating and mitigating factors presented by both the prosecution and the defence. The absence of any criminal record for the convict suggests that he is indeed a first-time offender. Furthermore, the factors that as to convict's age, dependents coupled have been duly taken into account. I have also considered that the convict was charged with unailable offence. Therefore, he has been under custody from August 19, 2020.

Nevertheless, it is imperative to recognize that, in the first count, the offender has been convicted of trafficking in narcotic drugs, namely cannabis sativa, an offence punishable by life imprisonment. Considering the proviso of section 60(2) of the Economic and Organized Crime Control Act, Cap. 200, R.E. 2019, along with section 15(1)(a) and (3)(iii) of the Drug Control and Enforcement Act, Cap. 95, R.E. 2019, this Court is mandated to impose the sentence of life imprisonment as stipulated by the law and not otherwise.

Regarding the second count of possession of prohibited plants, the sentence prescribed under section 11(1)(b) of the Drug Control and Enforcement Act is imprisonment for a term of not less than thirty years. Given the mitigation factors presented by the defense, I am of the opinion that, a minimum sentence of thirty-year term of imprisonment is just and fitting for this case.

Consequently, the convict is sentenced to serve life imprisonment for the first count and thirty years of imprisonment for the second count. These sentences will run concurrently. It is so ordered.


S.E. KISANYA
JUDGE
05/02/2024

Court: Sentence pronounced this 5th day of February, 2024 in the presence of the parties mentioned earlier.


S.E. KISANYA
JUDGE
05/02/2024

Court: The accused person is duly apprised of his right to appeal against the judgment, conviction and/ or sentence.




S.E. KISANYA
JUDGE
05/02/2024