IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MMILLA, J.A., NDIKA, J.A., And KITUSI, J.A.)

CRIMINAL APPEAL NO. 151 OF 2018

LILIAN JESUS FORTES ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

[Appeal from the decision of the High Court of Tanzania
(Corruption and Economic Crime Division)
at Dar es Salaam]

(Matogolo, J.)

Dated the 4th day of June, 2018
in
Economic Crime Case No. 4 of 2017.

JUDGMENT OF THE COURT

15th July, 2020 & 2nd September, 2020

KITUSI, J.A.:

Lilian Jesus Fortes, a Cape Verde national, was travelling from Sao Paulo city of Brazil to Malawi. On 18th October, 2016 she was at the Julius Nyerere International Airport (JNIA) in Dar es Salaam Tanzania on transit to Malawi. While checking in in preparation for boarding to proceed with her journey, she was arrested allegedly for being in possession of drugs. She was subsequently charged with Trafficking in Narcotic Drugs, contrary

PW3 to physically examine the contents of that bag, which PW3 did. PW3 removed the contents of the bag including books but even after doing so its weight suggested that there was still something in it. The empty bag was placed on the screening machine again and the suspicious image was still visible although this time it was clear that the image was in a patch sewn within the insides of the bag.

By this time Yahya Haji Mkangala (PW5) also an operator of the screening machine had inched closer. He used a pair of scissors to cut the sewn patch open inside which they found a parcel in a silver paper wrapping. PW5 enlisted assistance of the police by informing DC Ngenda (PW2), who in turn informed Inspector Yusuph Maneno Chiwanga (PW11) about what was taking place. PW11 was the police officer in charge of Terminal II at the airport.

PW2 works with the Anti-Drug Unit within the Police Force and he is stationed at JNIA. The Airport security officers turned over the appellant to PW2, who was also given her belongings including the bags, her travel documents and the suspected parcel. He led the appellant to Interpol offices for interrogation but that did not materialize because there was

to section 15 (1) (b) of the Drug Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the First Schedule to, and section 57(1) and 60 (2) both of the Economic and Organized Crimes Control Act [Cap. 200 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

The prosecution alleged that Lilian had in her possession 2.38 kilograms of drugs known as Cocaine Hydrochloride, which was hidden in her bag. Lilian, whom we shall be referring to as the appellant, denied carrying any drugs, but the High Court accepted the prosecution's version, found her guilty and convicted her with the charged offence, upon which she was sentenced to life imprisonment. This is an appeal against both the conviction and sentence, and only a few facts are uncontroverted. We are therefore compelled to tell the whole fable.

It begins at the Airport (JNIA) where Getrude Kadege (PW3) and Fatuma Idd Shomari (PW4) were on duty as Airport Security Officers on 18-10-2007, with the latter operating the screening machine.

When the appellant placed her bags on the screening machine, PW4 observed something suspicious in one of them. Therefore, PW4 instructed

language barrier. The appellant only spoke Portuguese and this fact will later feature prominently as having affected the appellant's pre-trial procedures.

So, what happened when the appellant was in the hands of the police? According to PW2, the appellant had two bags the other one which was bigger having been offloaded from the plane. It is the smaller bag which was the center of the suspicion and PW2 formally searched it in the presence of PW4, PW5 and PW11. There were in that bag, books, appellant's passports and air tickets and the suspicious parcel wrapped in a silver foil paper.

When the parcel was opened it was found to contain white powder suspected to be cocaine, and this was immediately confirmed by an initial test which was conducted right there at the Airport. The said test according to PW2 is normally done by applying reagents, and in this case the white powder turned blue, an indication that the sample might be cocaine.

PW2 prepared a certificate of seizure (Exhibit P6) which was signed by him, the appellant, PW11 and other officials working at the Airport. Thereafter PW2 and PW11 handed over the appellant to Insp. Dickson

Haule (PW9) as well as the two bags including the suspicious bag together with its contents. This was done by signing a handing over certificate (Exhibit P8). In his testimony PW9 rendered support to that account. That was on 18/10/2016.

Those suspicious items were packed, sealed labelled, and marked in the presence of the appellant. This was witnessed by among others, Faidha Ally (PW6), Christina Patrick (PW7) and Veronica Makwenya (PW8) who works with the Tanzania Revenue Authority (TRA) at JNIA. These civilian witnesses signed a document as witnesses to the packing, sealing and labelling as well as marking. The suspicious parcel was given Number JNIA/IR/175/2016.

After packaging, sealing and labelling the suspicious items, PW9 handed them over to D/CPL Jesias (PW10) the exhibit keeper on 18/10/2016 for that night. On 19/10/2016 PW9 collected the exhibits from PW10 and sent them to Domician Dominic (PW1) a Government Chemist, where the package was given Laboratory Number 1811/2016.

PW1 testified that he received from PW9 a sealed box (Exhibit. P1) bearing number JNIA/IR/175/2016 accompanied by a Form No. 001,

weighed the samples and analyzed them to establish if they were drugs. They weighed 2.38 kilograms. PW1 prepared and issued a report to PW9 confirming the substance to be cocaine hydrochloride, on the basis of which the appellant was prosecuted.

There is a considerable legal wrangle over the report of the Government Chemist and its authenticity, which we shall have to resolve later.

In her defence the appellant stated that she was traveling from Sao Paulo to Malawi via Abu Dhabi and Dar es Salaam. She wondered why, if she was indeed carrying drugs as alleged, she had earlier been cleared for boarding at Sao Paulo and Abu Dhabi. She further stated that she had checked in one bag at Sao Paulo and carried one hand luggage in which she kept her passport, mobile phones and money. At the time of checking in she placed her luggage and other belonging on the screening machine as some travelers were behind her and others in front of her. However, immediately she went through the screening machine she was instructed to step aside and wait. After that, her passport was snatched from her hands without any explanation being given by the officer who did that. She

denied to be the owner of the small bag which the prosecution had tendered as Exhibit P3 maintaining that hers was a smaller handbag.

In relation to the certificate of seizure (Exhibit P6), the appellant said she knew nothing about it and that she was made to sign several documents at the Airport the contents of which she could not figure out. We shall also consider the import of the several statements of prosecution witness which the appellant's advocate managed to tender at the trial in the course of cross examining those witnesses. These are: Exhibit D1 being PW1's statement, Exhibit D2 statement of PW6, Exhibit D3 statement of PW7, Exhibit D4 statement of PW10, Exhibit D5 statement of PW11 and Exhibit D6 statement of PW9.

The trial court was satisfied with the evidence of PW3 and PW4 that the suspicious bag belonged to the appellant because these witnesses saw her place it on the screening machine. It was also satisfied that from that point onward the chain of custody of the suspected material which later turned out to be cocaine was not broken. It also dealt with the issue of there being two reports from the office of Chief Government Chemist, and resolved it on the basis of settled law that the court evaluates the

testimony made in Court not otherwise. The case of **Ngeti Mwaghnia v. Republic** [1960] E.A. 3 was cited.

Finally, the trial High Court concluded that the case against the appellant had been proved by the prosecution beyond reasonable doubt. It accordingly convicted and sentenced her as earlier indicated.

That decision is now under attack on nine grounds. Mr. Nehemiah Nkoko, learned advocate, who had acted for the appellant during trial continued to represent her before us. Ms. Janethreza Kitaly, learned Senior State Attorney and Ms. Clara Charwe, learned State Attorney, stood for the respondent, the Republic. They were fiercely opposed to the appeal.

Hearing proceeded with the facilitation of an Interpreter one Gossaji Iddi Masoud who translated from Portuguese to Kiswahili and vice versa. The appellant who was not physically in Court but linked from the Prison through video facility, only speaks Portuguese, hence the need for the interpreter. This issue of language barrier is also a source of animated arguments from the appellant's counsel as is seen immediately below.

In arguing the appeal, Mr. Nkoko combined some of the grounds and argued others separately. To start with, he combined grounds 1 and 2. In the first ground of appeal the trial High Court is being criticized for proceeding to try the appellant to whom the offence charged had not been disclosed as required by section 23 (1) of the Criminal Procedure Act, [Cap 20 R.E. 2002] hereafter, the CPA, and section 48 (2) (a) (ii) of the Drug Control and Enforcement Act, No. 5 of 2015, hereafter the Act. In ground two, the High Court is criticized for proceeding to try the appellant who, having no interpreter did not know the nature of the charges against her. Clearly, the two grounds are intertwined so it is apt to address them together.

Mr. Nkoko submitted that there is evidence from PW2, PW3, PW9, PW10 and PW11 that the appellant could not communicate because she only spoke Portuguese which none of them knew. The thrust of the learned counsel's submissions in this respect is that the appellant was consequently denied her right under section 23 (1) of the CPA and section 48(2) (a) (ii) of the Act.

He further submitted that an accused's defence commences at the time of his or her arrest, and that in this case denial of the relevant information to the appellant at the initial stages, subsequently led the High Court into treating her defence as an afterthought. He wound up this part by complaining that even the decision to prosecute the appellant took too long, submitting that the appellant was not given a fair trial because of the failure to arrange for an interpreter as early as possible.

Responding to submissions on grounds 1 and 2, Ms. Kitaly conceded that the appellant had a right under s. 23 (1) of the CPA and 48 (2) (a) (ii) of the Act, to be informed of the nature of the charges with which she was being held. The learned Senior State Attorney submitted that under the circumstances obtaining in this case it was difficulty to comply with the dictates of the law.

Ms. Kitaly referred us to section 23 (3) (a) & (b) of the CPA which provides for an exception to section 23 (1). She submitted that at the time of arresting the appellant, section 48 (2) of the Act did not have a provision similar to section 23 (3) (a) and (b) of the CPA although in the recent amendments that provision was made to reflect a scenario like the present.

She submitted however, that the appellant was aware that she was being held in relation to what happened at the Airport. She also pointed out that in any event the formal reading of the charges to the appellant was done in the presence of an interpreter, maintaining that the appellant was finally not prejudiced. On the alleged delay in prosecuting the appellant, the State Attorney was emphatic that she was immediately charged vide PI No. 38 of 2016 but that case was subsequently dismissed in September 2017 before the present charge was subsequently preferred.

In a short rejoinder, Mr. Nkoko submitted that the appellant was prejudiced by the denial of an interpreter. He further submitted that the record does not support the contention that the appellant had been charged earlier.

We prefer to deal with this issue right away, and we instantly agree with Mr. Nkoko that the processing of the case was far from smooth as some of the provisions of the CPA and of the Act were not fully complied with. However, Mr. Nkoko having raised the issue of delayed prosecution of the appellant and the State Attorney having brought to our attention PI No. 38 of 2016 in response, he cannot turn around and move us not to take

note of the existence of those previous proceedings against the appellant. Therefore, we take note that the appellant was originally charged in court on 21st October 2016 vide PI No. 38 of 2016. Apart from that, the record supports the fact that the case was adjourned for a good number of times on the ground of unavailability of an interpreter. We take all this to have been well intentioned to give the appellant a fair hearing.

Then there is the question of failure to fully comply with section 23 (1) of the CPA and section 48 (2) (a) (ii) of the Act and whether this prejudiced the appellant. To start with, we cannot help but reproduce section 48 (1) and (2) (a) (ii) of the Act which provides:-

> *"48.-(1) Arrest procedures and powers conferred on officers of the Authority under this Part shall be strictly applied.*
>
> *(2) For the purposes of subsection (1), an officer of the Authority and other enforcement organs who-*
>
> *(a) arrests a suspect shall:*
>
> *(i) not applicable;*

(ii) inform the person arrested grounds or reasons for arrest and substance of the offence he is suspected to have committed;

Mr. Nkoko is correct, in our view, in arguing that the above provision was not complied with, which Ms Kitaly has conceded to. What the learned attorneys are at variance on is the justification and the consequences of that noncompliance. Ms. Kitaly argues that the noncompliance was caused by language barrier and that it is unfortunate that at the time relevant to this case, Section 48 of the Act had not been amended to accommodate a situation such as the present. She urged us to be inspired by sub section (3) (a) of section 23 of the CPA. The said sub section provides:

"(3) Subsection (1) does not apply to or in relation to the arrest of a person -

(a) if by reason of the circumstances in which he is arrested, that person ought to know the substance of the offence for which he is arrested; or

(b) if by reason of his actions the person arrested makes it impracticable for the person effecting the arrest to inform

him of the offence for which he is arrested."

We are not prepared to blindly apply section 48 (2) (a) (ii) of the Act as it stood before amendment, without sense of reason, while aware of the fact that what caused the noncompliance is language barrier. We take inspiration from section 23 (3) (a) of the CPA cited above to appreciate that there may be occasions such as the one in this case where full compliance becomes impossible. It occurs to us that doing otherwise may lead to absurdity whereby law enforcement agents may have to let go, genuine suspects who happen to speak foreign languages, just to guard against appearing like they denied them the right to a fair hearing. In this case we are satisfied that the appellant knew the reason for her arrest and that, in our conclusion, cures the noncompliance.

Furthermore, since it is on record that when the charge was formally read over to the appellant there was an interpreter, the failure to comply fully with section 48 (2) (a) (ii) of the Act at the time of the arrest being an exception under the circumstances, was not fatal, in our conclusion. It would have been different if the prosecution had sought to rely on a

confession allegedly recorded from the appellant under such circumstances, but that is not the case.

We accordingly find no merit in grounds 1 and 2 and dismiss them.

Next are grounds 3, 4, 5 and 6. Mr. Nkoko submitted that these grounds raise issue with search, seizure and chain of custody, and the learned counsel proposed to argue them together. In his submissions Mr. Nkoko took us to the testimony of PW2 who seized the suspected bag and recorded its contents in the seizure certificate (Exbibit P6), weighing 2.3. kilograms. PW10 and PW11 supported PW2 that the contents of the parcel weighed 2.3 kilograms, yet the report by the Chief Government Chemist (CGC) shows that it weighed 2.38 kilograms. Mr. Nkoko argued that the increase in weight especially after removing the packaging material was unusual and unexpected.

The learned counsel submitted that there was something wrong in the chain of custody because there were two reports from the office of the CGC, a fact confirmed by PW9 in his statement tendered as Exhibit D5. He went on to refer to discrepancies in the evidence of key witnesses along the chain of custody. He submitted that PW9 stated that PW10 witnessed

the sealing of the suspected samples, but PW10 denied the fact. Again, PW9 stated that he was with PW2 when he went to the CGC's office but PW2 denied that fact. To make matters worse at the CGC PW2 failed to identify the box in which the alleged drugs were.

Mr. Nkoko submitted that there are gaps in the evidence right from possession, chain of custody and to CGC's office. He pointed out that the absence of the appellant's statement which is mandatory under section 48 of the Act worsens matters because her denial of ownership was not recorded. He wondered why there were no CCTV footage to cover the episode. He further submitted that Regulation 21 the Drug Control and Enforcement (General) Regulations, 2016, hereafter, the Regulations, which requires taking of samples by the investigator was violated hence what was seized differs with the report from the CGC. He maintained that the chain of custody was broken despite there being Exhibits P8 and P9, handing over certificates.

Two cases were cited by counsel to support his position, these are: **Moses Mhagama Laurence v. The Government of Zanzibar,** Criminal Appeal No. 17 of 2002 (unreported) where the appeal was allowed because

of different versions regarding the weight; and **Alberto Mendes v. Republic,** Criminal Appeal No. 473 of 2017 (unreported) on the chain of custody.

In her submissions in relation to grounds 3, 4, 5 and 6 Ms. Kitaly started by drawing our attention to the evidence of PW3 and PW4 that they saw the appellant place on the screening machine the bag they later came to suspect and search. PW3 and PW4 handed over the appellant and the suspected bag to PW2 who prepared a seizure certificate. The learned Senior State Attorney submitted that the chain of custody from PW2, PW9, PW10, PW1 and all other witnesses, was unbroken.

On the difference of the weight of the suspected substance, Ms. Kitaly submitted that there is no evidence that PW2 and PW11 who initially found the substance weighing 2.3 kilograms used any scientific method to come to that conclusion. On the other hand, the conclusion of PW1 as to the weight of the substance should be taken to be the correct one because he is the one who had the duty to weigh the substance scientifically. She even referred to the fact that PW2 and PW11 were not cross-examined on the issue of weight and submitted that the discrepancy does not go to the

root of the case, citing the case of **Vuyo Jack v. Republic**, Criminal Appeal No. 334 of 2016 (unreported).

Ms. Kitaly addressed the complaint of there being two reports from the CGC. She submitted that according to PW1 he prepared only one report dated 17th July 2017, a fact supported by his own statement (Exhibit D1) and PW10 at page 60 of the record. PW1 disowned the other statement, she submitted.

As for the contention that PW2 failed to identify the box that was sent to the CGC, the learned Senior State Attorney referred us to page 77 of the record where it shows that when the box was given to PW9, the other police officers were outside. Further that the sealing was done in the presence of the suspect and other police officers; she submitted that there was no mention of the names of those other police officers. The case of **Marceline Koivogui v. Republic,** Criminal Appeal No. 469 of 2017 (unreported) was cited to support the view that it is the evidence of a person who directly dealt with the exhibit which should be considered.

In his rejoinder Mr. Nkoko stuck to his gun by insisting that under S.48 of the Act and Regulation 16 the seizing officers or investigators have

a duty to weigh the substance and added that the defence could not have cross-examined PW2 and PW1 on something they were not disputing.

On the two reports Mr. Nkoko submitted that the evidence adduced by the prosecution itself is inconsistent with the submission that there was one report. He drew our attention to Exhibit D1 which bears the same reference number as the one on page 139 (statement of PW10). He submitted that he impeached PW1 at page 41 by using sections 154 and 164 of the Tanzania Evidence Act [Cap. 6 R.E. 2002] (TEA). Those provisions he submitted, do not require the reading of a statement of a witness in the course of impeachment.

As for the failure by PW2 to identify the box, Mr. Nkoko submitted that the prosecution witnesses contradicted each other on the point and the appellant should have benefitted from the contradictions.

We shall now consider the arguments in relation to grounds 3, 4, 5 and 6 but we shall split them in two lots. We take note that ground 7 in which the appellant complains about the two reports has been argued along with the above four grounds, understandably so because it would be difficulty to sever it from them.

The first lot is the issue of possession, covering grounds 3 and 4. We are of the view that the issue of possession is a matter of evidence to resolve whether, in fact, the bag in which the suspected substances were found, belonged to the appellant or she was in possession thereof. We gather from the evidence of PW3, PW4 and PW5 that each passenger checking in, would himself or herself place his or her baggage in the screening machine, and the appellant was no exception. There is no controversy about that. We also gather from their testimonies, and the appellant alluded to the same fact, that the passengers would go through the screening machine one at a time. The evidence of PW3 and PW4 is that the appellant is the one who placed on the screening machine, the bag that was later found to contain the suspected substances.

The trial court found PW3, PW4 and PW5 credible witnesses as seen at page 272 of the record. As we said at the beginning of our deliberation on this issue, the determination of possession is an evidential issue. The same approach was taken in **Moses Mwakasindile v. Republic**, Criminal Appeal No 15 of 2017 (unreported) where we stated:

> *"At any rate in the circumstances of this case the question whether the baggage was appellant's or*

not is one of credibility of witnesses and this Court will generally not disturb any finding of a trial court based on credibility of evidence considering that the latter is in a better position to decide the question".

Do we have any reason to fault the learned trial Judge in his finding regarding the credibility of PW3, PW4 and PW5? We do not have any reason, and none has been suggested to us by the appellant's counsel. Before we conclude this part, we wish to address a related complaint falling under ground 8 of appeal. This is a complaint that in determining the truth of what took place at the screening point, the trial Judge shifted the burden of proof onto the appellant. The complaint arises from the following statement appearing in the judgment of the trial court at page 276:

"Although in her defence, the accused alleged that the small bag does not belong to her, implying that the same was planted on her, [but] she did not give evidence to explain how it happened. She did not request for CCTV camera footage to establish allegation of the narcotic drugs to be planted to her as her as to raise doubts to the prosecution case".

Mr. Nkoko submitted that the Judge wanted the appellant to prove her innocence, which is against rules of burden of proof in criminal cases. Responding to this argument, Ms Kitaly submitted that the portion of the trial Judge's remarks is a demonstration of his refusal to believe the defence case. We have considered this complaint and we are increasingly of the view that what we see here is more a matter of style than failure on the part of the Judge to appreciate the principles of burden of proof in criminal cases. Again, this complaint is neither here nor there, because the issue of possession of the suspected substance was decided on the evidence of PW3, PW4 and PW5, not on the absence of CCTV camera footage.

It is finally our finding that grounds 3 and 4 as well as ground 8 have no merit, we dismiss them.

We move to grounds 5, 6 and 7 regarding chain of custody. Chain of custody, though also a matter of evidence, has legal requirements that need to be fulfilled to establish it. Generally, the requirement is under the CPA but specifically for drug cases, Part VI of the Regulations provides for duties on the arresting and investigation officers. Mr. Nkoko has cited some

of these Regulations in challenging the chain of custody and we shall address those arguments at an opportune time.

The attack on the chain of custody is double edged. **First**, the allegation that there are two reports by the CGC is raised to support the contention that the chain of custody was broken. **Secondly**, it is alleged that there are two versions as regards the weight of the alleged drugs which, it is submitted, is a violation of Regulations 16 and 21 of the Regulations.

To begin with, let us consider the issue of two reports, one dated 26th February 2016, and another dated 17th July 2017 tendered by the prosecution as Exhibit P5, both allegedly made by PW1. It was submitted by Mr. Nkoko that PW1 made a statement at the police (Exhibit D1) showing that there was the report dated 26th February 2016. Ms. Kitaly submitted that PW1 disowned Exhibit D1, and the trial court accepted PW1's denial. Mr. Nkoko has submitted that he impeached PW1 on the statement and referred us to page 41 of the record of appeal.

In resolving this issue, the trial court was of the view that PW1 should be evaluated for what he stated in court under oath, and cited the case of **Ngeti Mwaghnia v. Republic**, (supra). Before that the trial court

had appreciated the evidence of PW1 showing that due to heavy workload it would not have been possible for him to prepare the report dated 26th February 2016, the same day he received the samples.

We are aware that the purpose of producing in court previous statements of a witness is either to demonstrate consistence on the part of that witness, according to section 166 of the Evidence Act, or impeach him according to sections 154 and 164 of the same Act. We also take inspiration from the decision of the High Court in **Godfrey Maleko v. Thomas Mwaikaja,** [1980] T.L.R 112 in relation to section 166 of T.E.A. In this case the learned defence counsel wanted to impeach PW1 by using sections 154 and 164 of the Evidence Act. Section 154 provide:

> *"154 A witness may be cross examined on previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him or being proved, but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him".*

The relevant part of section 164 is sub section (1) (c) which provides:

> *"164 (1) The credibility of a witness may be impeached in the following ways by an adverse party or, with the consent of the court. By the party who calls him-*
> *(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted".*

The procedure for impeaching a witness by using his previous writing therefore, requires the following to be done, in our view; **First**, the previous statement must be read to him. **Secondly** the attention of the witness must be drawn to those parts which are intended to demonstrate contradictions. **Thirdly**, the statement should be tendered in evidence. Was the above procedure followed in this case? We are afraid it was not followed because what we see on page 40 to 41 are cross examinations after which a prayer to tender the statement is successfully made. See also the case of **Waisiko Ruchere @ Mwita v. Republic**, Criminal Appeal No. 348 of 2013 (unreported) in which the steps for impeaching a witness by using his previous statements were discussed. Therefore, we are not prepared to hold Exhibit D1 against PW1 because its admission did not amount to impeachment in law. We are also impressed by PW1's

explanation that it could not have been possible for him to prepare the report as early as 26th February 2016, the same day he had received the samples. If anything, the so-called report dated 26th February 2016, could have been a mere draft.

On the issue of two conflicting versions as to the weight of the drugs. The relevant provision, in our view, is regulation 16 (c) of the Regulations, which we reproduce hereunder to make reference easy:

> *"16 Immediately following the seizure of a narcotic drug or psychotropic substance, the authorized officer in- charge of the seized substance shall take all reasonable steps to ensure that: -*
> *(c) where it is physically possible to count and weigh the seized drug, the officer in charge shall measure and record gross or net weight".*

The above provision does not, in our view, impose on the police a duty to prepare an accurate report as to the weight of drugs seized by them, because it requires them to weigh "where it is possible" and that the weight may be gross or net. We therefore go along with Ms. Kitaly in her submission that the office of the CGC is the one which has the means and mandate to make accurate measurements of weight. The same position

was taken in the case of **Marceline Koivogui v. Republic** (supra) where we stated:

> *"Next for consideration is the alleged discrepancies in the testimonies of PW2, PW3 and PW10 as to what was weighed and packaged. We wish to point out that, the examination and packaging of narcotic drugs is an expertise which is the domain of the Chief Government Chemist".*

In our conclusion on the issue of weight, we are satisfied that what was cited in the charge is the weight which the prosecution had a duty to prove, and in that bid, they adduced evidence of PW1 who is competent on that area. The testimonies of police officers on the weight were from persons who had no competence and they could not be said to have contradicted PW1 on that. In addition, we find the difference in the versions of weight not significant considering that the police had no scientific means of taking weight of the drugs. Having found no merit in the two major complaints falling under grounds 5, 6 and 7 we conclude that the chain of custody was not broken and that regulation 16 of the Regulations was substantially complied with. These grounds are dismissed.

The last ground of appeal is ground 9 which is a general complaint that the trial court erred in convicting the appellant against the weight of evidence. Mr. Nkoko submitted that the weight of the evidence was not given due consideration by the trial court. He wondered why the majority of the prosecution witnesses were police officers and only immigration and TRA officials were independent witnesses. He also wondered why didn't the investigators call one of the travellers as a witness. The learned counsel cited the case of **Havyalimana Azaria & 2 Others v. Republic**, Criminal Appeal No. 539 of 2015 (unreported) to support his argument and prayed that we quash the judgment and set aside the sentence imposed on the appellant. On her part Ms. Kitaly submitted that on the basis of her submissions in relation to grounds 3, 4, 5 and 6, the trial court's conclusion was justified. She urged us to dismiss the appeal.

On our part by way of conclusion, we think the last ground of appeal is bound to be dismissed. This is because after finding under grounds 1 and 2 that the infraction in the pre-trial handling of the appellant did not prejudice her, and after satisfying ourselves that grounds 3 and 4 challenging the possession of the drugs had no merit and finally having concluded that the chain of custody did not get broken anywhere, we

cannot but agree with the learned trial Judge in his finding the appellant guilty. Consequently, we find the entire appeal to be devoid of merit, and we accordingly dismiss it.

DATED at **DAR ES SALAAM** this 31st day of August, 2020.

B. M. MMILLA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

The Judgment delivered this 2nd day of September, 2020 in the presence of Liliana Jesus Fortes the Appellant in person linked via video conference from Segerea and Ms. Joyce Nyumayo, State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL