

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION

AT TABORA-SUB REGISTRY

ECONOMIC CASE NO. 04 OF 2021

THE REPUBLIC

Versus

DICKSON JACKSON @ PANDILA

JUDGMENT

13/06/2022 & 15/06/2022

E.B. LUVANDA, J.

The accused person Dickson Jackson @ Pandila is arraigned for trafficking in narcotic drugs contrary to section 15(1)(a) and (3)(iii) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by section 8 of the Drugs Control and Enforcement (Amendment) Act No. 15 of 2017, read together with Paragraph 23 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act, Cap 200 R.E. 2002 as amended.

It is alleged in the particulars of offence that on 13/04/2019 along Nzega – Singida Road within Igunga district in Tabora region, the accused trafficked

in narcotic drugs, namely cannabis sativa commonly bhang weighing 99.42 kilograms. The accused person denied the information.

During the preliminary hearing the accused person admitted a fact that he is hailing from Morogoro. He also admitted a fact that on the material date he was travelling from Nzega to Morogoro and upon arriving at Ipunga he was arrested and taken to the police station. On his defence, the accused (DW1) admitted to had requested for a lift to a driver of a lorry and boarded at the cabin, where he was the only passenger. The accused dispelled the allegations that he was arrested therein in possession of five sacks of cannabis sativa (exhibit P1).

In **Nchangwa Marwa Wambura vs Republic**, Criminal Appeal No. 44 of 2017 Court of Appeal of Tanzania (unreported), at page 7 the Court held that,

'It is a trite law that the burden of proof against the accused always lies on the prosecution and no conviction shall be entered on account of weak defence but upon proof of the case beyond a reasonable doubt'

Herein the accused person made some admission to some facts and denied being found in possession of exhibit P1. To prove this fact, D/Cpl Clarence (PW1) stated that after being tipped by the driver of heavy truck (lorry) with

foreign (Rwandese) registration number RAD044R, that he carried a passenger who loaded therein a cargo of sacks smelling cannabis sativa, he (PW1) rushed to a traffic check point. PW1 explained that he was assisted by traffic officer WP Elizabeth to stop that lorry. The driver stopped, where he (PW1) directed the accused to unload his cargo of five sacks. After unloading, PW1 let the driver of a lorry to go. Thereafter PW1 requested for assistance of the OCS Insp. Alex Kataya (PW3), who on the spot arrived thereat, loaded the cargo in a police car and proceeded to the police station. According to PW1, on arriving at the police station, they took a search warrant, opened sacks where they saw chaffs and at the middle of each sack there was a black bag containing leaves of cannabis sativa. PW3 supported a fact that the accused and cargo was taken to the police station by a police car, then conducted search in the presence of Amos Jegu (PW4), by opening the five sacks where they saw chaffs in outer cover, inside there was a black bag containing leaves of cannabis sativa.

However, it was not made clear by PW1 or PW3 as the exercise done at the police was it a search as contemplated by PW1 or something else which PW3 termed it as an observation. There is no tenable explanation as to why PW1 did not conduct formal search at the check point where a lorry was stopped,

the accused disembarked and cargo unloaded. The act of PW1 for unloading cargo, and let the driver of the lorry to go unceremoniously without even taking or recording his statement is contrary to the norms of preliminary investigation and expected standard of tactical shrewdness for the cop and uncalled for. Actually it creates a reasonable doubt on the conduct of PW1 who bragged that the informant driver of a lorry, was his friend. The explanation of PW3 who tried to dilute and neutralize the alleged friendship by saying PW1 and the driver happened to exchange contacts while PW1 was a traffic police is little assistance. If it was such an obvious thing or fact why PW1 did not make it clear in court when he was asked during cross examination regarding his relationship with the driver of the lorry, where PW1 insisted that he was his friend. Assuming that PW1 happened to know the driver of a lorry on the course of his duty, still a query could arise, as if at all PW1 used to exchange contacts with whatever driver or foreigner whom he stopped his vehicle for inspection. That seem to be something awkward. All said still there is a huge doubt which even enabled the accused to insert some segments into his defence that, after stopping a lorry, PW1 and the driver had a long conversation privately on the rear of a lorry, leaving

him alone on the cabin. Thereafter only to see is arrested alone and the driver is let to go and proceed with his journey escort free.

Also there was no tenable explanation from PW1 as to why he choose to disobey even instructions of his senior officer (OCS) PW3, who said his instructions to PW1 was for a lorry to be stopped there at a check point. But seemingly PW3 was puzzled on arriving there only seeing the suspect alone and that a lorry is nowhere to be seen at the scene.

For another thing, while PW1 and PW3 said, they took the accused and cargo to the police station by a police car. But the independent witness PW4 said while at Igunga Police Station at 09.00 hours, he saw the accused escorted by police in a car Scania brand, where he witnessed them unloading five nylon bags in that Scania which was a private car, thereafter it departed at the police station. This contradiction is material as it forms a total reversal to a fact adduced by PW1 and PW3 that they arrived at the police using police car. According to PW1 and PW3 shortly thereafter they followed the driver of a lorry at Misigiri, took the driver alone to the police leaving a lorry at Misigiri. A fact by PW3 that they took the driver alone at Misigiri and a car lorry remained there, contradict with what was stated by the driver of a lorry in his statement exhibit P5 which was tendered by D/Cpl Petro (PW5), where

he was recorded to have said at the second page fifteenth line from top, I quote in verbatim,

'Nikiwa njiani nilipovuka kidogo MISIGIRI nilipigiwa simu na yule askari wa Igunga CLARENCE ambaye ni rafiki yangu na kuniambia kuwa viongozi wa polisi wameamuru na mimi nirudi kwa mahojiano zaidi hivyo nisimame wanakuja kunichukua. Kweli mimi nilisimama na mda si mrefu askari walifika nikawa nimegeuza gari yangu tukaja nao mpaka kituo cha polisi. Nilipofika hapo nilikuta askari wameshafungua hayo magunia ya pumba ambayo ilibainika kuwa ndani yake kweli kulikuwa na viroba vya bhang'i kila gunia na yule mtu mda huo tayari alikuwa ameshawekwa mahabusu'

In exhibit P5 the maker nowhere said he parked a lorry at Misigiri, according to his statement connote that he reversed and proceeded right away to the police station.

Another anomaly, PW1 on cross examination stated that on arrival at the police station the driver was interviewed. Also PW3 stated that they took the driver to the police and recorded his statement. And according to PW1 from that date he never come across the driver. However, exhibit P5 depicted that it was recorded on 24/04/2019 being after expiry of eleven days counting from the occurrence of the incident on 13/04/2019. This create another

doubt, as in exhibit P5 the maker had made it clear that he was phoned call for purpose of interview. And if a statement was recorded on a different date it ought to have been indicated so on express terms.

Apart from the above discrepancies and anomalies, even the chain of custody was not properly maintained. PW5 stated that on 19/5/2019 he took the five envelopes of samples drawn from five sacks of leaves of cannabis sativa, for submitting to the chief government chemist at Mwanza. According to PW5 he arrived to Mwanza on 20/5/2019 in the night and submitted the exhibits to the chief government chemist on 21/05/2019, for analysis. I doubt if travelling from Igunga to Mwanza can take such long time from 19/5/2019 (night and day) to 20/5/2019 (for all day long). According to the chemist Tupeligwe Reuben Mwaisaka (PW2) she received those sample on 21/5/2019 in the afternoon. Now, if PW5 arrived to Mwanza on 20/5/2019 in the night, why he delayed to submit the exhibit to the chemist till in the afternoon. As much, this delay was not accounted for by PW5, it cannot be said that the chain of custody in so far as the integrity and reliability of sample is concerned, was properly maintained. The testimony of PW5 was too loose which at any rate does not eliminate doubts of possible tempering. This is because, PW5 did not tell us as where he preserved those sample the whole

of 19/5/2019 and on 20/5/2019 where he alleged he arrived in the night at Mwanza.

To my view, the depicted contradictions above are so glaring which goes to the root of the prosecution evidence to the extent that the prosecution case flop.

Appreciation to Mr. Rwegira Deusdedit learned Senior State Attorney for the republic and Ms. Flavian Francis learned Counsel for the accused for their valuable contributions during the trial. I also appreciate for their labored submissions.

I therefore nod with the learned defence Counsel, that the prosecution have failed to prove their case beyond reasonable doubt as required by the law.

That said, the information in respect of an offence of trafficking in narcotic drugs contrary to section 15(1)(a) and (3)(iii) of Act No. 5 of 2015 (supra) as amended by section 8 Act No. 15 of 2017 (supra), read together with Paragraph 23 of the First Schedule to, and sections 57(1) and 60(2) of Cap 200 R.E. 2002 (supra) are dismissed. The accused person is acquitted.



E.B. Luvanda
Judge
15.6.2022