

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION

AT TABORA-SUB REGISTRY

ECONOMIC CASE NO. 06 OF 2021

THE REPUBLIC

Versus

1. CHARLES SIMBANG'OMBE @ DOTTO

2. KASHINDYE KULWA @ MADOSHI

JUDGMENT

15/06/2022 & 17/06/2022

E.B. LUVANDA, J.

Charles Simbang'ombe Dotto (first accused) and Kashindye Kulwa Madoshi (second accused) are indicted as follows: 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 (first count, for both accused persons); possession of seeds in production of drugs contrary to section 11(1) of Act No. 5 of 2015 (*supra*) (second count,

for first accused person alone); possession of firearms contrary to section 20(1)(b) and (2) of the Firearms and Ammunitions Control Act No. 2 of 2015, read together with Paragraph 31 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 (third count, for the first accused alone).

It is alleged in the particulars of offence that on 23/09/2018 at Kanolo area in Igombe Forest Game Reserve within Uyui district in Tabora region, the accused persons jointly and together trafficked in narcotic drugs, namely cannabis sativa commonly bhang weighing 1938 kilograms. Also the first accused was alleged found in possession of 113 kilograms of seeds of cannabis sativa in production of drugs, including a muzzle loader gun without a permit. The accused persons denied the information.

The only question for determination, is whether the prosecution has discharged its obligation to prove the information on the standard required.

Generally speaking, this matter was mounted to prosecution based on assembled evidence which on the face of it are marred with glaring discrepancies, contradictions and obvious brokerage of chain of custody, in particular the first and second counts.

For one thing, the evidence in chief by SP Bagati Kadelia Nhende (PW2), D/CPL Maseke (PW4) suggest that twenty two sacks of leaves of cannabis sativa were seized from the first accused and twenty six sacks of leaves of cannabis sativa were seized from the second accused. However, both were charged jointly and together under the first count, where particulars of offence depict the total weight being 1938 kilograms, meaning that it was lamped together. This amount to duplex or omnibus charge/count which the law abhors.

More importantly a report for the lamped together weight is missing, was not tendered in evidence. The omission is fatal as the jurisdiction of this Court is solely based on the threshold of the weight of a seized narcotic drugs of cannabis sativa. See section 15(1) and (3) read together with section 2 at the definition of the word 'court' in particular paragraph (b) of the Drugs Control and Enforcement Act, Cap 95 R.E. 2019.

For another thing, while PW2 said they seized a total of fifty sacks of leaves and seeds of cannabis sativa, but a letter crafted by PW2 addressed to the Weight and Measures Agency dated 24/9/2018, depict that he requested the Agency to measure weights in respect of 59 sacks. On similar vein, while PW4 and D/Sgt Elly (PW6) said on examination in chief that they seized a

total of fifty sacks of leaves and seeds of cannabis sativa, but on cross examination along their previous statements indicate that a total number of fifty nine sacks were seized. The explanation by PW6 during re-examination that they did not charge the accused persons in respect of fifty nine sacks for reasons that the rest sacks were dispelled by the accused persons, is legally untenable and unjustifiable. It is a novel idea to say that you arrest the suspect with illegal article or thing, then you prefer to charge him or her based on a portion or part or amount admitted by the suspect and the remained portion you abandon it.

I am alive of the rule which require to make an assessment or evaluation regarding the gravity of contradictions or discrepancies founded on the prosecution witnesses. In the case of **Dickson Elia Nsamba Shapata and Another vs Republic**, Criminal Appeal No. 92 of 2007 Court of Appeal of Tanzania (unreported), held I quote,

'In evaluating the discrepancies, contradictions and omission it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statement. The Court has to decide whether inconsistency or contradictions are only minor or goes to the root of the matter'

Herein, the contradiction and inconsistency of PW4 and PW6 regarding the total number of sacks of cannabis sativa seized at the scene, to my view is material contradiction which is unforgivable and cannot be ignored. Therefore it is fatal.

Again, in the extrajudicial statement exhibit P7 depict that the first accused confessed to have been found in possession of only ten sacks of cannabis. In other words, even exhibit P7 differs with deposition of PW2, PW4 and PW6.

It is to be noted that, the records of search by police officer cum certificate of seizure exhibits P2 and P3 are silent regarding the fifty-nine sacks, only depict a total of fifty sacks. But still the said exhibits P2 and P3 are problematic, in a sense that on the front page reveal were issued by PW2 (executing officer) on 23/09/2019 at 03.30 hours, while at a rear page seizure reveal was effected on 23/09/2018, meaning that there is something fishy with these documents.

Chain of custody. According to PW2 from the scene they proceeded to the office of RPC then to Uyui Police Station, where they handed over the exhibits to the exhibit keeper WP Christina. But the alleged WP Christina was not

summoned, neither mentioned as among prosecution witnesses. A paper trail for handing over is missing. Essentially PW2 did not explain the modality of handing over, whether it was formal or informally.

For another thing, while PW2 suggest that the fifty sacks of cannabis sativa were unloaded at Uyui Police Station on the same date, PW6 stated that the exhibit of cannabis sativa was unloaded at Tabora Central Police and they collected them later, only a gun was handed over straight to Uyui Police Station. Apart from contradicting stories between PW2 and PW6, still PW6 was not clear as to whom the exhibits were handed over at Tabora Central Police, neither made it clear as when and who collected the fifty sacks of cannabis sativa from Tabora Central Station and handed over to Uyui Police Station. Unfortunately even the alleged exhibit keeper at Uyui Police Station WP Christina was not summoned.

Paulo Mtango (PW1) the chemist, stated that he received fifty envelopes of leaves and seeds of cannabis sativa from Cpl Rose from the office of OCCID Tabora, as also reflected in the analysis report form DCEA 009 exhibit P1. But the alleged Cpl Rose was not summoned, even a dispatch for handing over was not tendered.

PW6 stated that fifty envelopes of sample were drawn by the Weights and Measure Agency and drafted a letter to that effects. However, the sampling officer was not summoned and his report was not tendered as aforesaid.

Again there were no explanation as to why it took such long period of time from the date of seizure of fifty sacks of leaves and seeds of cannabis sativa exhibit P8 on 23/9/2018 up to 27/7/2020 when PW1 alleged to have received samples of fifty envelopes of leaves and seeds of cannabis sativa. An unexplained period of two years and three months, is too huge rendering the reliability of those sample questionable.

Therefore, a story by PW2, PW4 and PW6 that they seized ten sacks of leaves of cannabis sativa in the bedroom of the first accused, fourteen sacks (ten of leaves and two of seeds of cannabis sativa into a store where they were led by the first accused; twenty four sacks of leaves of cannabis sativa into a room where the second accused had asleep, cannot be said to have been proved on the required standard, in view of shortfalls and contradictions ensured above. Equally the output or end product a report of analysis exhibit P1 for analysis done from samples of fifty envelopes emanating from a source where a chain of custody is irreparably broken, cannot be said to be credible and reliable.

In view of the above, I hold that the prosecution has failed miserably to prove the information in particular the first and second counts levelled to the accused persons. Otherwise the third count against the first accused was proved beyond a shadow of doubt. The evidence of PW2 and PW4 that they seized a muzzle loader gun exhibit P4 into the house where the first accused was asleep, abound and was not was subject to cross examination. On his examination in chief Charles Simbang'ombe Dotto (DW1), said nothing regarding being found in possession of exhibit P4. On cross examination, by implication DW1 conceded to this fact. Even in the extrajudicial statement exhibit P7, DW1 confessed to have been found in possession of exhibit P4. His plea that he was just looking after it or else that it belongs to his deceased father, is unfounded. His reservation in exhibit P7, that he is not conversant on using it (exhibit P4), cannot suffice to exonerate him.

Therefore, the information in respect of an offence (first count, for first and second accused) of trafficking in narcotic drugs and possession of seeds in production of drugs (second count, for first accused alone), are dismissed and the first and second accused are acquitted of it.

The first accused is found guilty and is convicted for the offence of possession of firearm (third count) contrary to section 20(1)(b) and (2) of

the Firearms and Ammunitions Control Act No. 2 of 2015, read together with Paragraph 31 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 R.E. 2002 as amended.

E.B. Luvanda
Judge
17.6.2022



