

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

**ECONOMIC CASE NO. 05 OF 2021**

**THE REPUBLIC**

*Versus*

**CHELA PAULO @ SELELI**

**JUDGMENT**

**09/06/2022 & 16/06/2022**

**E.B. LUVANDA, J.**

Chela Paulo @ Seleli is indicted for trafficking in narcotic drugs contrary to section 15(1)(b) of the Drugs Control and Enforcement Act No. 5 of 2015, 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 8/06/2017 at Izugawima Village Nzubuka Ward within Uyui district in Tabora region, the accused person trafficked in narcotic drugs, namely cannabis sativa commonly bhang weighing 74.7 kilograms. The accused person denied the information.

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

The facts of this case are simple and straightforward, that on 8/06/2017 at 00.30 hours police officers including D/Cpl Rajabu (PW1) and his colleague conducted search in the houses situated at Lumbai Game Reserve in Izugawima Village, alleged belongs to the accused person. According to PW1 in the course of that search they found nothing illegal into a bedroom of the accused and in another house where the young brother of the accused was bedding, they impounded five sacks of leaves of cannabis sativa, exhibit P3. Upon oral interview at the scene, the alleged wife and young brother of the accused distanced themselves and quickly pointed a finger to the accused as owner and proprietor of both a house and cargo of five sacks of cannabis sativa. According to PW1 a search was conducted in absence of the accused, whom were told was promenading somewhere at Izugawima Center.

It is to be noted that neither the alleged wife nor the said young brother of the accused were summoned to prove that indeed a house and cargo of five sacks of cannabis sativa belong to the accused person. Essentially even the evidence to establish that the lady found there was a wife of the accused is shobbily scattered. Equally there is no strong evidence to support a

proposition that the young man who was bedding inside a house alleged situated six paces away from the main house purported to belong to the accused, was indeed a young brother of the accused. That young man whom the five sacks of cannabis sativa were impounded, his age was undisclosed. Here the prosecution witnesses were not absolved of the burden to establish the age of that purported young man, for a reasonable inference to be drawn that he was entitled to be exonerated and excused from the liability, given a fact that the impugned cargo was found under his physical control or guard.

No local leader of whatever level from the branch, hamlet, suburb, village or game warden as the case may be, was summoned to support the argument of the prosecution witnesses that the said homestead belong to the accused. An argument by PW5 that they failed to procure people or leaders for reasons that it was inside game reserve, is unfounded. As it was his testimony that they followed the accused at the Center and if it was a case, why they did not seize that opportune (second chance) to summon any person there to stand as an independent observer.

The alleged villagers whom SP Bagati Kadela Nhende (PW5) alleged they assisted them to spot and direct them the location where the accused is

living inside a game reserve, were not made as among prosecution witnesses to prove actual residence of the accused who was arrested far away at Izugawima Center, while asleep to another lady (paramour).

As to how a search was conducted, also it leaves a lot to be desired. For one thing, while PW1 said they started to knock a door of the accused bedroom where his wife was found bedding, PW5 said they started knocking in a house/hut where the alleged young boy/brother of the accused was asleep. PW5 stated that the young boy is the one who took them to a house or bedroom of the accused, but PW1 was silent on this aspect. PW1 said they started to conduct search in a house where the lady was sleeping, while PW5 testimony was suggesting that a search was done in a hut where the young boy was sleeping, in view of satisfying if at all it was a cannabis sativa. PW5 said nothing regarding searching into a house where the lady was sleeping. It was unexplained by PW5 as to how and why they wanted to satisfy if at all it was a cannabis sativa. The story of PW5 is disjointed, in a sense that it suggests having knowledge beforehand of the alleged five sacks of leaves of cannabis sativa.

Be as it may, another point of departure between PW1 and PW5, is that PW1 suggested that the search was done in total absence of the accused, while

PW5 said after satisfying that it was cannabis sativa, they divided into two groups, where PW5 remained at the scene and another group went to the Center and procured the accused back at the house, where he identified the lady as his wife and young boy as his young brother, and claimed ownership of a cargo of five sacks of cannabis sativa. This was contrary to what was stated by PW1 that after seizure, they took the lady and sacks of cannabis sativa loaded in a car and all proceeded to the Center to trace the accused and proceeded straightaway to Uyui Police Station. PW5 stated that the accused's wife is the only one who signed a seizure certificate (exhibit P5). Surprisingly, PW5 who said that an official seizure was done in the presence of the accused, but said only the wife of the accused and a young boy are the one who signed a seizure certificate. PW5 while under oath did not mention the accused as among those who signed a seizure certificate. However, exhibit P5 depict that the accused had appended right thumb print acknowledging search and seizure of five sacks of cannabis sativa. But exhibit P5 is defective for being incomplete, as the seizing officer (PW5) did not sign. According to a standard form of certificate of seizure Form No. DCEA 003 on the Third Schedule to the Drugs Control and Enforcement Act, Cap 95 R.E. 2019, at the extreme bottom item 4, require the executing

officer to record his/her name, date and append a signature, which are all missing in exhibit P5. The omission dwindles the weight to be attached to it, being worthless.

Regarding chain of custody, was also problematic. According to PW1 sample were drawn and packed in five envelopes (part of exhibit P3) by the Weights and Measurements Agency on 15/6/2017 and submitted to the chemist Mwanza on 3/1/2019. On cross examination, PW1 stated that after the Weights and Measures Agency had packed sample in five envelopes, when he took them back to the police station, the same were re-sealed by forensic. It was not stated as to why the alleged forensic decided to re-seal. It is to be noted that, PW1 did not say as to where those envelopes were preserved after being packed by the Weights and Measurement Agency. PW5 did not explain as to why it take a great amount of time to submit sample to the chemist Mwanza on 3/1/2019 counting from when sample were packed on 15/6/2017. At any rate an unexplained period of one year and six months is exorbitant and therefore questionable.

In view of the above, I hold that the chain of custody was impaired and therefore impeachable.

That said, the retracted caution statement of the accused person (exhibit P6) cannot bailout the prosecution case which cannot sail through either. In the case of **Michael Luhiye vs Republic** (1994) TLR 181, it was held as follows,

***'It is always desirable to look for corroboration in support of a retracted confession before acting on it but a court may convict on retracted confession even without corroboration'*** bold added

The above adumbration shows there is no evidence worthy for corroboration in respect of retracted confession exhibit P6.

So, to sum it up, 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), is dismissed. The accused person is acquitted.



E.B. Luvanda  
**Judge**  
**16.6.2022**

