

TANZANIA / JUDGMENT

JOHN PETER SHAURI 222 Edited

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE CORRUPTION AND ECONOMIC CRIMES DIVISION MANYARA SUB-REGISTRY AT BABATI ORIGINAL JURISDICTION ECONOMIC CAUSE NO. 40128 OF 2023 THE REPUBLIC VERSUS JOHN PETER SHAURI @PF 21639 A/INSP. JOHN PETER SHAURI..... ACCUSED 23d July & 11th October, 2024

Kahyoza, J.: The prosecution arraigned John Peter Shauri @ PF 21639 A/Insp. John Peter Shauri (John Peter) (the accused person) before this Court charged with the offence of prohibition of trafficking of narcotic drugs; to wit conveying 264 bundles of catha edulis(khat) commonly known as "mirungi", weighing 102.5 kilograms. Allegedly the accused person used motor vehicle with registration No. T. 465 CUS make Toyota Noah to commit the offence. John Peter denied the information. The prosecution summoned 12 witnesses and tendered twelve exhibits to prove the accused person guilty. There is one basic issue that is whether John Peter was trafficking in catha edulis (khat) weighing more than one hundred kilograms. 1 John Peter is facing the information of the offence of prohibition on trafficking in narcotic drugs contrary to section 15 (1) (a) and (3) (iii) of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] (the DCEA), read together with paragraphs 23 of the First Schedule to, and section 57(1) and 60 (2) and (3) of the Economic and Organized Crime Control Act, [Cap. 200, R.E. 2022]] (the EOCCA). The prosecution alleged that, on 13th day of July, 2023, John Peter was found conveying 264 bundles ofcatha edulis (khat) commonly known as "mirungi", weighing 102.5 kilograms using a motor vehicle with registration No. T. 465 CUS make Toyota Noah. A/Insp. Emmanuel Kandoro (Pw2) got information that a motor vehicle driven by a person wearing jungle green police uniforms was conveying narcotics. The informer told him that the motor vehicle's registration number was T. 465 CUS. He passed the information to D/Cpl Dickson and D/Cpl Pius (Pw6) who were with him patrolling Babati to Arusha road. While still discussing the information, the motor vehicle with specifications stated passed at that place. He identified the vehicle by its registration number and decided to pursuit it. The motor vehicle stopped before reaching Kiongozi bridge. They stopped and parked on the right-hand side of suspect's vehicle. The driver lowered the window and greeted A/Insp. 2 Emmanuel Kandoro (Pw2) "Afande VipF. He asked him where was he going and the driver responded that he was going to Babati. Before he went close to him, the driver drove away at a speed. A/Insp. Emmanuel Kandoro (Pw2) saw him and suspected that he was a person he had seen before. However, before he could examine him properly, the drive took off. He became suspicious that he may have not been a police officer that is why he left. They pursued him at a speed. They gave sign to stop he did not stop. A/Insp. Emmanuel Kandoro (Pw2) instructed his

driver D/Cpl Pius (Pw6) to knock the suspect's vehicle. He knocked it from behind, but the driver did not stop. He knocked sideways, the suspect's car lost control and the driver decided to stop. He stopped and opened the passenger's door and ran away. He was in police uniform. A/Insp. Emmanuel Kandoro (Pw2) and ran after him. They could not catch hold of him and people did not come to their help as they were surprised to see civilians running after a police as A/Insp. Emmanuel Kandoro (Pw2) and his team were in plain clothes. They went to the scene of the crime and found Mwajabu Iman (Pw5) and asked her to assist them to find out why the police had escaped leaving his motor vehicle. They entered the suspect's car and found one beret black in colour, a photocopy of the motor vehicle 3 registration card in the name of Anacleth Duncan. They also found a mount Meru hospital registration card in the name of John Peter Shauri and four sacks made of sisal fibers, brown in colour and upon opening them they found bundles of fresh leaves suspected to be narcotics commonly known as "mirungi". The bundles were wrapped in newspapers. He notified the regional Crimes Officer (RCO) and the OC CID. As dark had started to set in and for their safety and safety of the consignment, they decided to tow the vehicle as it could not start. They went with the independent witness in the vehicle with exhibit up to Babati police station. They opened the sacks and counted the bundles of leaves suspected to be narcotics. The first sack had 75 bundles, the second sack had 65 bundles, the third sack had 65 bundles and the fourth sack had 59 bundles. He labeled the sacks as follows, a sack labelled A had 75 bundles, sack labelled B had 65 bundles, sack labelled C had 65 bundles and sack labelled D had 59 bundles. A/Insp. Emmanuel Kandoro (Pw2) opened a police case file number BAB/IR/2386/2023. Using a chain of custody form, A/Insp. Emmanuel Kandoro (Pw2) handed the exhibits to F 2449 Sgt James (Pw4), which were four sacks containing 264 bundles of leaves suspected to be narcotics, a 4 beret, a copy of the registration card, techno mobile phone, Mt. Meru Registration Card, and a motor vehicle with Reg. No. T. 465 CUS Toyota Noah. Upon receipt of exhibits, on 13.07.2023 at 09:00pm from ACP Emmanuel Kandoro (Pw2), F 2449 Sgt James (Pw4) stuck a tape and wrote the police case number. He also wrote the police case number on the envelope with the beret and on the envelope containing mobile phone. He tendered a police beret as exhibit P. 11 and the mobile phone handset exhibit P.12. A/Insp. Emmanuel Kandoro (Pw2) took four sacks containing the bundles of leaves suspected to be narcotics from F 2449 Sgt James (Pw4), the exhibit keeper, to the Government Chemist Arusha on 14. 7.2023. He had instruction to bring the suspect to Babati police station as he was already arrested and he was at Arusha police station. He handed four sacks containing the bundles of leaves suspected to be narcotics, a letter, and the submission Form to Michael Sikaloli Benard (Pwl), a government analyst, Michael Sikaloli Benard (Pwl) counterchecked the documents against the contents. 5 According to Michael Sikaloli Benard (Pwl), each sack had mark A,B,C or D and police case number BAB/IR/2386/2023. He counted the contents in the sacks. A sack named A had 75 bundles, a sack named B had 65 bundles, a sack named C had 65 bundles and a sack named D had 59 bundles. The sacks had 264 bundles of leaves suspected to be narcotic drugs "mirungi" in total. Michael Sikaloli Benard (Pwl) counted the contents in the four sacks, signed exhibit submission form and the chain of custody. He removed the bundles from the sacks and the newspapers wrappings. Having removed 264 bundles from packages, he weighed them. They weighed 102.5 kilograms. After signing the sample submission Form, (Form DCEA 001) and the chain of custody

form, Michael Sikaloli Benard (Pw1) drew sample, sealed the sacks, and marked them with the Lab Reg. No. NZO 23-00732. He endorsed his signature on the seal on the sacks, and handed the exhibit together with the sample receipt notification form, signed the sample receipt notification form. He returned 264 bundles after drawing sample. He signed the chain of custody and A/Insp. Emmanuel Kandoro (Pw2) also signed it. A/Insp. Emmanuel Kandoro (Pw2) left to Arusha police station, they picked the suspect and drove to Babati police station. 6 Michael Sikaloli Benard (Pw1) put the sample in the envelopes which he marked according to the marks on the corresponding sack from which he drew the sample. He analyzed the sample and found that the sample contained two chemicals cathinone and cathine, which are found in khat leaves. He established that the substance was khat. He tendered the government chemist report as exhibit P.1. and DCEA Form 001 as exhibit P.2. He contended after he received the exhibits from Kandoro, he issued him a sample receipt Notification Form as exh. P. 3. On 25.8.2023 Victor Joseph Kimario (Pw3) entertained an application seeking the order for destruction of four sacks containing bundles of leaves suspected to be narcotics commonly known as "mirungi". He issued the destruction order, witnessed the destruction, and issued a certificate of destruction (Exh. P. 7). Victor Joseph Kimario (Pw3) deposed that he signed also an inventory certificate (Exh. P. 6). Mwajabu Imani (Pw5), an independent witness, deposed that on 13.7.2023, while at her business place saw a land cruiser motor vehicle knocking the Noah motor vehicle. The driver of the Noah motor vehicle lost control, stopped and the driver of the land cruiser parked beside the Noah driver's door. The driver of Noah opened the passenger's door and left. She 7 saw a police officer in green uniform leaving Noah motor vehicle. He escaped. People from the land cruiser pursuit him. They passed at five paces from where she was standing. She deposed that one day police called her to police station and showed her a police officer who was driving the Noah motor vehicle and she identified him as a person in court. DR. Rose Highness Mende (Pw7) from Mt. Meru hospital refused to attend a person called John Shauri on 7.7.2023. She deposed that scrutiny of the e-system she found out that John Peter Shauri registered in the system, paid consultation fees and issued with a file number but, there was no information if he was treated. Lalashowi Jonathan Kweka (Pw8), a laboratory technician, drew biological sample from the accused person and added it to A/Inspector Chisano. Assistant Insp. Chisano gave the sample to G.1659 D/CPL Jerry (Pw9) to submit to the government chemist office. G.1659 D/CPL Jerry (Pw9) deposed that he travelled to Dar es salaam on 19.7.2023 and on 20.7.2023 went to the government chemist office and handed biological sample and the police beret to Rajabu Omary Mohamed (Pw10), a government chemist analyst. 8 He went to the forensic office and handed one mobile phone handset to Rajabu Omary Mohamed (Pw10). Rajabu Omary Mohamed (Pw10), the government chemist analyst, received sample from G.1659 D/CPL Jerry (Pw9) analyzed and found out that the DNA profile of Exhibit A, the beret, black in colour suspected to be related DNA arrangements to the sample of the suspect's blood matched. The suspect was PF. 21639 A/Insp. John Peter Shauri. He could not tender the report as the court found that the regulations regarding collection, documentation, and transportation of DNA sample for profiling were breached. A/Commissioner, Juma Wilfred Majura (Pw11) supported the evidence of ACP Kandoro that motor vehicle Noah was found conveying narcotics. ACP Kandoro opened four sacks and counted at police station in the presence of Mwajabu Imani (Pw5), an independent witness. He

deposed that he communicated with the then Regional Crimes Officer of Arusha, David Mhanaye, that John Peter Shauri, a police officer was found trafficking in narcotics, mirungi and that he escaped. The RCO arrested John Peter Shauri and notified A/Commissioner, Juma Wilfred Majura (Pwll). A/Insp. Chisano Bigolame (Pw12) deposed that he was at police station when Noah motor vehicle was brought at police station searched and 9 found conveying narcotics drug. He added that they found Mount Meru hospital medical registration card in the name of John Peter Shauri. They also found other items in the vehicle, such a cellular phone make techno, one beret of police, a photocopy of the motor vehicle registration card in the name of Anne Cratus Duncan. A/Insp. John Peter Shauri (Dwl), the accused person, defended himself on oath refuting to commit the offence. He deposed that on 14.07.2023 the Arusha Regional Crimes officer arrested him. He added that police from Babati took him from Arusha police station to Babati police station. He admitted that biological sample was drawn for DNA profiling while at Babati police station. He admitted to take part at the destruction of sacks. He testified further that, on 07.07.2023 he went to Mt. Meru Hospital at 02:00pm. He registered himself, as there were many people he did not wait to be treated at that hospital. Using online tax, that is in-drive taxi, he moved to another hospital where he was treated. He deposed that the police beret and mobile phone handset tendered as exhibits did not belong to him. io Were leaves suspected to be narcotics found in motor vehicle with registration No. T. 465 CUS make Toyota Noah? It is against the background stated above this court is destined for answering the issue whether John Peter was trafficking in catha edulis (khat) weighing more than one hundred kilograms. There exists ample evidence that A/Insp. Emmanuel Kandoro (Pw2) and D/Cpl Pius (Pw6) pursued a motor vehicle with Reg. No. T. 465 CUS make Toyota Noah, which they had prior information that it was conveying narcotics. To rescue himself, the driver escaped leaving motor vehicle with Reg. No. T. 465 CUS make Toyota Noah. A/Insp. Emmanuel Kandoro (Pw2) and D/Cpl Pius (Pw6) searched the vehicle in the presence of Mwajabu Iman (Pw5), an independent witness at the scene and found a beret black in colour, a photocopy of the motor vehicle registration card in the name of Anacleth Duncan, a Mount Meru hospital registration card in the name of John Peter Shauri and four sacks with bundles of fresh leaves suspected to be narcotics commonly known as "mirungi". As it was dark and for their safety, they decided to tow the vehicle up to Babati police station where they re-opened the sacks. After reaching Babati police station, A/Insp. Emmanuel Kandoro (Pw2) countered the contents of in the four sacks in the presence of and found D/Cpl Pius (Pw6), 11 Mwajabu Iman (Pw5), an independent witness, and Juma Wilfred Majura (Pwll), among others. They found that the four sacks contained bundles of leaves suspected to be narcotics. He marked the first, second, third and fourth sack as A, B, C and D respectively. He counted the contents in the sacks. A sack named A had 75 bundles, a sack named B had 65 bundles, a sack named C had 65 bundles and a sack named D had 59 bundles. The sacks had 264 bundles of leaves suspected to be narcotic drugs mirungi in total. A/Insp. Emmanuel Kandoro (Pw2) tendered a seizure certificate, (Fomu Na. DCEA 003) as exhibit. P2. I have no reason to question the prosecution evidence of A/Insp. Emmanuel Kandoro (Pw2), D/Cpl Pius (Pw6), Mwajabu Iman (Pw5), the independent witness, and Juma Wilfred Majura (Pwll) that they found 264 bundles of leaves suspected to be narcotic drugs mirungi in motor vehicle with Reg. No. T. 465 CLIS. They were consistent as to what they found in the sacks. Exhibit P.2, the seizure certificate, (Fomu Na. DCEA

003) is another evidence to support prosecution's oral evidence. A/Insp. Emmanuel Kandoro (Pw2), D/Cpl Pius (Pw6) and Mwajabu Iman (Pw5), the independent witness testified that the driver of motor vehicle with Reg. No. T. 465 CUS who wore jungle green police uniform 12 escaped arrest. The evidence was uncontradicted. I have no reason not to believe that piece of evidence. I find, therefore, that the prosecution proved beyond reasonable doubt that A/Insp. Emmanuel Kandoro (Pw2) and D/Cpl Pius (Pw6) found 264 bundles of leaves parked in four sacks, suspected to be narcotics in motor vehicle with registration No. T. 465 CUS make Toyota Noah. They also proved that the driver escaped in police jungle green uniform. Mwajabu Iman (Pw5), the independent witness, supported the evidence of two police officers who were at the scene of the crime. Were 264 bundles of leaves parked in four sacks proved to be khats commonly known as "mirungi" weighing more than 100 kilograms? The prosecution evidence was to the extent that A/Insp. Emmanuel Kandoro (Pw2) handed 264 bundles of leaves parked in four sacks suspected to be narcotics F 2449 Sgt James (Pw4). F 2449 Sgt James (Pw4) registered the sacks, labeled them with the police case number and stored them. On A/Insp. Emmanuel Kandoro (Pw2) marked the sacks A, B, C, and D. On 14. 7.2023 F 2449 Sgt James (Pw4) issued four sacks containing 264 bundles of leaves in fours to A/Insp. Emmanuel Kandoro (Pw2) to take to the Government Chemist Office in Arusha. A/Insp. Emmanuel Kandoro 13 (Pw2) handed four sacks containing the bundles of leaves suspected to be narcotics, a letter, and the submission Form to Michael Sikaloli Benard (Pwl), a government analyst. Michael Sikaloli Benard (Pwl) counterchecked the documents against the contents. Michael Sikaloli Benard (Pwl), deposed he received four sacks marked A, B, C or D and police case number BAB/IR/2386/2023. He counted the contents in the sacks. A sack named A had 75 bundles, a sack named B had 65 bundles, a sack named C had 65 bundles and a sack named D had 59 bundles. The sacks had 264 bundles of leaves suspected to be narcotic drugs mirungi in total. It is on record that A/Insp. Emmanuel Kandoro (Pw2), F 2449 Sgt James (Pw4) and Michael Sikaloli Benard (Pwl) signed chain of custody form, which was tendered as exhibit P. 4 when handing the four sacks from one person to the other. Michael Sikaloli Benard (Pwl) testified that he drew sample from each bundle and put the sample from bundles in a particular sack to one envelope and marked the envelope according to the corresponding mark on the sack. He sealed the sacks with the Government Chemist seal, signed on the seal, labeled them with laboratory number and returned the sacks after drawing sample to A/Insp. Emmanuel Kandoro (Pw2) on the same day. 14 A/Insp. Emmanuel Kandoro (Pw2) drove back to Babati and handed back four sacks, sealed with Government Chemist seal, signed on the seal and labeled with laboratory number to F 2449 Sgt James (Pw4). F 2449 Sgt James (Pw4) kept the four sacks until on 25.8.2023 Victor Joseph Kimario (Pw3) issued the destruction order, witnessed the destruction, and signed the certificate of destruction (Exh. P. 7. The prosecution evidence proved that the chain of custody did not break from the time of seizure to the time submitting the four sacks containing 264 bundles of leaves suspected to be narcotics to the government chemist for forensic analysis up to destruction. The defence advocate complained that Michael Sikaloli Benard (Pwl), the sampling officer violated regulations 18 and 20 of the Drug Control and Enforcement (General) Regulations, G.N. No. 173/2016 as amended G.N. No. 690/2023 (the Regulations). He submitted that the sampling officer did abide with the procedure of drawing sample, packing and labeling of sample. He submitted that the regulation 20(4) provided that the

envelope containing sample to bear the signature of the witnesses, occupier, possessor, seizing and of the authorized officer. He contended that the accused person was neither involved in drawing sample nor did he sign the envelope containing samples. 15 I was unable to buy the defence argument that the accused person was not involved as it evident that the accused person or the suspect escaped arrest. The substance suspected to be narcotics were seized in the absence of the suspect. In addition, it is evident that samples were not extracted at the place of seizure but the seized exhibits were taken to the Government chemist Agency office in Arusha where samples were extracted. Additionally, I did not find that the government officer offended regulation 18 of the Regulations. Sub regulations (2) and (3) of regulation 18 provide the methods of drawing samples. It allows a representative sample to be drawn where the packages or container seized are of identical size weight, large quantity markings, contents of similar colour; texture and give identical results on colour tests and the drawing samples from individual package or container are unreasonably lengthy exercise. Michael Sikaloli Benard (Pw1) testified how he drew sample from each bundle in a particular sack and put them in one enveloped and marked the envelope as per he mark on the sack. He complied with the law. But he was also entitled to draw sample representative as there is evidence that the bundles contained fresh leaves all were wrapped in newspapers, thus, the package and the color were the same. Not only that but also Michael Sikaloli Benard (Pw1) being 16 a government analyst was required to comply with the guidelines of taking sample issued by his office issued under regulation 18(3) of the Regulations.

18. (2) Where the packages or container seized together are of identical size, weight, large quantity, markings, contents of similar colour; texture and give identical results on colour tests and the drawing samples from individual package or container are unreasonably lengthy exercise, the Government analyst shall draw representative sample.
- (3) In the process of drawing samples, the Government analyst shall draw the representative samples based on guidelines made under these regulations or any other guidelines made for that purpose. The defence submitted further that regulation 22 of the Regulations and section 36 of DCEA were not complied with. The accused person's advocate submitted that the sampling officer was required to prepare the sampling inventory bearing the date of sampling, place of sampling, investigation IR No. name of the officer taking sample, description of the sample and witness. I had an opportunity to read regulation 22 of the Regulations and section 36 of DCEA which regulate the procedure for disposing of the seized substance. The purpose of the procedure is not difficult to find, it is intended 17 to the seized substance is actually destructed. If, the disposal procedures are violated, the violation would not affected the report of the government chemist. It is on record that the seizing officer in this case filled the inventory and tendered it as exhibit P 6. The accused person signed the inventory, Victor Joseph Kimario (Pw3), the magistrate and other witnesses signed it. The law provides that the officer in charge or the sampling officer may prepare the inventory. In the present case, it was the officer in charge, A/Insp. Emmanuel Kandoro (Pw2), who prepared the inventory. I am not moved that the inventory was not prepared or it was prepared in violation of regulation 22 of the Regulations and section 36 of DCEA. The

accused person's advocate submitted that the Government Chemist report that must be signed and be in quintuplicate in the prescribed form. He added that it must be in Form No. DCEA 009 which requires the description of the exhibit and not general result of the analysis. He also cited the case of Omary Said @ Athuman v. R., Cr. Appeal no. 58/2022. He concluded that it was not proved beyond reasonable doubt that the substance was narcotic drugs known as khat "mirungi". I read section 48A of the DCEA which provides among other things that to deliver a signed report in quadruplicate in the prescribed form. The 18 accused person complains that the report was not in number and format required. Without much ado, I wish to state that the complaint is baseless as Section 48(2) of DCEA provides that any document purporting to be a report signed by a Government Analyst shall be admissible as evidence. Michael Sikaloli Benard (Pw1), the government analyst delivered a signed report which he tendered as Exh. P.1. I find nothing wrong with the report. Section 48A (2) provides that- "(2) Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by a Government Analyst shall be admissible as evidence of the facts stated therein without formal proof and such evidence shall, unless rebutted, be conclusive." The government chemist report depicted that the substance were narcotic drug known as khat commonly known as mirungi weighing 102.5 kg. Since there is no evidence to rebut the findings, I find without hesitation that 264 bundles of fresh leaves seized from the motor vehicle with Reg. No. T. 465 CUS make Toyota Noah were khats commonly known as "mirungi" weighing more than 100 kilograms. 19 Is the accused person responsible for convening khats in motor vehicle with Reg. No. 465 CUS make Toyota Noah? It is on record that the suspected escaped arrest leaving behind the motor vehicle with Reg. No. 465 CUS make Toyota Noah which was loaded with four sacks of 264 bundles of fresh leaves proved to be khats commonly known as "mirungi" weighing 102.5 kilograms. The issue is who was driving or conveying narcotic drugs khats commonly known as "mirungi" The prosecution evidence was that it was the accused person. The accused person strongly refuted the prosecution's evidence. There are three prosecution witnesses who gave evidence to connect the accused person with the offence. The first witness was A/Insp. Emmanuel Kandoro (Pw2) who deposed that after they stopped the motor vehicle with Reg. No. 465 CUS make Toyota Noah, the driver who was in police jungle green uniform greeted him. Before could identify him properly, the suspect took off at speed. They pursued him. They knocked his car. The driver of the motor vehicle with Reg. No. 465 CUS make Toyota Noah lost control, stopped the vehicle, and then took to his heels. A/Insp. Emmanuel Kandoro (Pw2) and another police ran after the driver but could not arrest him. 20 It is obvious that A/Insp. Emmanuel Kandoro (Pw2) did not identify the driver. It was A/Insp. Emmanuel Kandoro (Pw2)'s evidence that he had previous worked with the accused at Arusha but that was not enough to identify given the circumstance of the case. Had he not found the Mount Meru hospital registration card in the accused person's name he would not have identified the suspect. I considered whether G 2880 CpI Pius (Pw6) identified the suspect. G 2880 CpI Pius (Pw6) was a driver of the police vehicle which pursued the suspect's motor vehicle. I am of the firm view that he did not identify the suspect. G 2880 CpI Pius (Pw6)'s evidence depicted that the suspect was an assistant

inspector of police wearing police jungle green uniform. G 2880 CpI Pius (Pw6)'s description did not directly point to the accused person. I find that his identification evidence did not move the prosecution's case any further. Mwajabu Iman (Pw5) was yet another witness was at the scene of crime. She gave evidence an independent witness. She deposed that she saw a motor vehicle make land cruiser pursuing another motor vehicle Noah. Suddenly a driver of the Noah motor vehicle, who a police parked, dropped from the vehicle, and ran away. She deposed that the suspect ran after him 21 and that she saw his face. She described the suspect as a bit tall, black in colour, and slender person who was in police uniform. She identified the accused person as a person who escaped from the Noah vehicle. I was unable to rely on her identification evidence as she deposed that after the police arrested the accused person, they called her at the police station and showed her the person who escaped from the motor vehicle. It is very likely that Mwajabu Iman (Pw5) identified the accused person because she had an opportunity to see him at the police station after his arrest. It was Mwajabu Iman (Pw5)'s testimony it was her first time to meet the suspect who was running. There is no dispute that there was sufficient light for Mwajabu Iman (Pw5) to identify the suspect as it was during the day time, however, the fact the suspect passed Mwajabu Iman (Pw5) running to avoid arrest and it was her first time to see the suspect, she could not have sufficiently identified of the suspect. There was a need of evidence to corroborate Mwajabu Iman (Pw5)'s identification evidence. The prosecution's effort to tender forensic evidence to link the accused with the offence proved futile as the sampling officer violated the procedure for collection, documentation, and transportation of the biological sample. For that reason, the court found the Government chemist report not 22 admissible. The only evidence which links the accused person with the offence is that the evidence that the accused person's Mount Meru hospital registration card was found in the motor vehicle used in commission of the offence. A/Insp. Emmanuel Kandoro (Pw2)z G 2880 CpI Pius (Pw6) and Mwajabu Iman (Pw5) deposed that the found among other things, the accused person's Mount Meru hospital registration card in the motor vehicle with Reg. No. 465 CUS make Toyota Noah. The prosecution proved beyond all reasonable doubt that the motor vehicle with Reg. No. 465 CUS make Toyota Noah was used in commission of the offence. DR. Rose Highness Mende (Pw7) deposed that the hospital electronic system depicted that a person in the name of John Peter Shauri (the accused person's name) attended at Mount Meru hospital on 7.7.2023 registered in the system, paid consultation fees and was issued with a file number but he did not appear before any doctor for treatment. The accused person raised the defence of alibi during his defence that he was attending training at Arusha, hence he was not at the scene of the crime. He however, admitted the fact that he went to Mount Meru hospital on 7.7.2023 registered in the system as there many patients, he could not 23 wait to be treated. He moved to another hospital where he attended was treated. He deposed that he hired on line taxes to move from Mount Meru hospital to another hospital where he was treated. During cross-examination, the accused person admitted that the Mount Meru hospital registration card dropped in the tax as he was moving from Mount Meru hospital to another hospital which he did not mention. As the direct evidence of identification was wanting as shown above, the prosecution remained

with circumstantial evidence. The accused person raised the defence of alibi without first giving notice. It is settled that a defence of alibi can be raised after giving a notice to the prosecution before it closed its case that the accused person intends to raise the defence of alibi. The law on this subject is well settled. First, the law requires a person who intends to rely on the defence of alibi to give notice of that intention before the hearing of the case. See section 194(4) of the Criminal Procedure Act, [Cap. 20R.E. 2022] (the CPA). If the said notice cannot be given at that early stage, the said person is under obligation, then, to furnish the prosecution with the particulars of the alibi at any time before the prosecution closes its case s. 194(5) of CPA. Should the accused person raise the defence of alibi much later, later than what is required under subsections 24

- (4) and (5) above, as was the case herein, the court may, in its discretion, accord no weight of any kind to the defence (s.194 (6)). The accused person's defence of alibi raised after the closure of the prosecution's case and without following the procedure, I find that defence an afterthought. I have a choice to consider it and afford it no weight or disregard the defence. The accused person does not dispute that the Mount Meru hospital registration card found in the motor vehicle, used in commission of the offence belongs to him but he disputes to have been in that vehicle. It is undisputed or proved fact that the driver of the vehicle used in commission of the offence was a police officer of rank of A/Inspector who was wearing police juggle green uniform. The accused person is also an A/Inspector of police who those he denied to have been in the vehicle used in commission of the offence, his Mount Meru hospital registration card was found in that vehicle. The accused person's explanation is that he dropped his card in the on-line tax while moving from Mount Meru hospital to another hospital he did not mention for treatment. The accused person did not state that the on-line tax he hired was the same or similar the motor vehicle with Reg. No. 465 CUS make Toyota Noah, used in commission of the offence. He did not state that the driver of the on-line tax he had hired was a police officer. I am alive and I cherish the celebrated principle that an accused person has no duty to prove his innocence. However, in the present case, the accused person had a duty to raise doubt by offering explanation how his Mount Meru hospital registration card got in the motor vehicle with Reg. No. 465 CUS make Toyota Noah, used in commission of the offence. The fact that; one, the accused person's defence of alibi is an afterthought having been raised after closure of the prosecution's case, which I accorded no weight; two, the accused person's Mount Meru hospital registration card was found in that vehicle, the driven a police officer of the rank of A/Inspector used in commission of the offence; three, the accused person is a police officer of the rank of an assistant inspector; I found it proved that there was no any other officer driving the motor vehicle with Reg. No. 465 CUS make Toyota Noah, used in commission of the offence other than the accused person. In the end, I find that the accused person not only was the driver of the motor vehicle with Reg. No. 465 CUS make Toyota Noah used in commission of the offence, but also, he is guilty of the offence of trafficking in narcotic drugs by conveying 264 bundles of *catha edulis* (khat) commonly 26 known as "mirungi", weighing 102.5 kilograms. I find that the prosecution proved the accused person's involvement in the commission of the

offence by circumstantial evidence. I convict him with the offence of prohibition on trafficking in narcotic drugs contrary to section 15 (1) (a) and (3) (iii) of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] read together with paragraphs 23 of the First Schedule to, and section 57(1) and 60 (2) and (3) of the Economic and Organized Crime Control Act, [Cap. 200, R.E. 2022]]. I order. Dated at Babati this 11th day of October, 2024. J. R. Kahyoza Judge 11/10/2024 Mr. Bizmana SA: Your Lordship, the prosecution has no previous conviction record of the accused person. I pray the court to impose the sentence provided by law, which is life imprisonment. Mr. Mlingi ADV: Your Lordship, I have nothing to mitigate, I am alive of the fact that I have the right to appeal, which we intend to exercise. 27 J. R. Kahyoza Judge 11/10/2024 SENTENCE The accused person is sentenced to serve the mandatory sentence of life imprisonment for offence of trafficking in narcotic drugs, to wit; catha edulis commonly known as khati Qt'mirungf', weighing 235.35 kilograms, contrary to section 15 (1) (a) and (3) (iii) of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] read together with paragraphs 23 of the First Schedule to, and section 57(1) and 60 (2) of the Economic and Organized Crime Control Court: I intend to forfeit the Exh. P.10, the motor vehicle, with 465 CUS make Toyota Noah. I invite you to address me on that. Mr. Bizmana SA: Your Lordship, I pray the motor vehicle used in the commission of the offence to be forfeited under section 49A of the Drug 28 Control Enforcement Act, [Cap. 95, R.E. 2019]. I also pray the mobile phone which the accused person refuted to own and the beret to be forfeited. Mr. Mlingi Adv: Your Lordship, since the items prayed to be forfeited were not the accused person's property, we have no objection for this Court to forfeit them Court: The motor vehicle exhibit P. 10 with 465 CUS make Toyota Noah, make Subaru shall be forfeited to the government after six months from today unless an application of a person claiming to be owner in terms of section 49A of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] or the Proceeds of Crime Act, [Cap.256 R.E. 2022] is filed and court in determining that application orders otherwise. I also order the beret to be returned to the Police Force Unit, handing the same to the OC CID and the mobile phone is forfeited to the government. Judge 11/10/2024 Court: Judgment delivered in the presence of the accused persons, his advocate Mr. Mlingi and Mr. Bizamana, State Attorney for the Republic. Right of appeal explained. B/ C Ms. Fatina (RMA) present. J. R. Kahyoza Judge 11/10/2024 30

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