

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA (CORRUPTION AND ECONOMIC CRIME DIVISION)
(DODOMA SUB REGISTRY) AT DODOMA ORIGINAL JURISDICTION ECONOMIC CASE NO. 28143
OF 2024 THE REPUBLIC VERSUS IBRAHIM JUMA NCHIRA.....
ACCUSED

JUDGMENT

Date of last Order: 19th November, 2024. Date of Judgment: 18th December, 2024. E.E.
KAKOLAKI, J. The accused person before this Court, a peasant and resident of Mafai village, within Kondoa District in Dodoma Region is facing a charge of Trafficking of Narcotic Drugs, Contrary to sections 15(1)(a) and 3(iii) of Drug Control and Enforcement Act, [Cap. 95 R.E 2019] (the DCEA) as amended, read together with paragraph 23 of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E 2022] (EOCCA). He is accused to have been in possession of 20 sacks of 1 cannabis sativa commonly known as bhangi in his house located at Mafai village within Kondoa District in Dodoma Region, in the morning of 26/08/2023, following an operation executed under the OC-CID for Kondoa District one ASP Mwakasungura in company of other police officers searching for narcotic drugs in different villages and suburbs within Kondoa District. In the said planned search, conducted in one house after another at Mafai village, the police officers led by A/Insp. Emmanuel Arobogast (PW2) in company of village chairman and the village executive officer (VEO) for Mafai village (PW5) as well as trained people militia (mgambo) from Kondoa, it is contented, they managed to retrieve 20 sacks of cannabis sativa or bangi from accused's house. In the course of that search it is disclosed further, the accused who was outside his compound came back and when interviewed confessed and associated himself with the said 20 sacks cannabis sativa or bangi retrieved from his house in which the certificate of seizure was filled in and signed by the accused himself, the officer who conducted the search and an independent witness after which the accused was transferred to Kondoa Police station and the seized exhibits handed to the exhibit keeper one Cpl. Joseph (PW3). Samples from the said exhibits were collected by the Government chemist (PW1) for testing in which the Government report (exh. 2 PE1) exhibited that, the collected samples were cannabis sativa weighing 404.37 kilograms in 20 sacks (exh. PE 2). When interviewed at police station the accused person denied the allegation of being found in possession of narcotic drugs and upon completion of investigation by the investigator (PW4), the accused person was arraigned before the Court facing the abovementioned charge. In proving

the above hinted allegations against the accused person, the prosecution relied on testimonies of five (5) witnesses above named and seven (7) documentary exhibits being Government Chemist Report (exh. PE1), 20 sacks of cannabis sativa (exh. PE2), Certificate of Seizure (exh. PE3), Court exhibit register PF16 (exh. PE4), Sample submission form at GCLA (exh. PE5), Sample Receipt Notification form at GCLA (exh. PE6) and chain of custody form (exh. PE7). On his side the accused person relied on his own evidence adduced under oath as a sole witness with no documentary exhibit to tender when disassociated himself from the accusations levelled against him by the prosecution. At the hearing both parties were represented as Ms. Rose Ishabakaki, Ms. Bertha Kulwa and Mr. Boaz Zephania, all learned State counsel appeared for the Republic while Mr. Cosmas Mataba, learned advocate fending the accused person. Having heard both parties' case the learned legal minds did not prefer to make their final submissions instead, left the matter for the court to decide as to whether the prosecution had proved its case against the appellant beyond reasonable doubt. As alluded to above, prosecution grounded its case on five (5) witnesses and seven (7) documentary exhibits, in a bid to assist the Court to find out whether the prosecution case against the appellant was proved beyond reasonable doubt, the duty which this Court is about to venture into. But before doing so it sounds better to narrate albeit in a nutshell the evidence as adduced by both parties. It was in the evidence of A/Insp. Emmanuel Arobagast (PW2) that, during the operation for search of narcotic drugs in the villages on 26/08/2023 morning at 06.00 hours, was assigned by the then OC-CID for Kondo District ASP Mwakasungula to lead the exercise at Mafai hamlet where he performed it in company of VEO (PW5) and trained militia men whom they had come with from Kondo. He averred that, when they reached at the accused house there was nobody therein and since the door was not locked, they managed to enter therein and retrieved 20 sacks of cannabis sativa from the bedroom and sitting room. And that, later on one man whom he identified as accused person appeared and the search exercise completed in his presence before he phoned the OC-CID for his approval as head of operation to seize the said substances whereby a certificate of seizure (exh. PE3) was filled and signed by him, the accused person and one trained militia man (mgambo) as independent witness. According to him after the exercised together with the accused person they moved back to Kondo Police Station where he handed the said 20 sacks of cannabis sativa to exhibit keeper (PW3). When subjected to cross examination on what he had recorded in his statement reduced at police, PW2 confessed that, it is true he said they met the accused person on the way to another house after searching his house and that it is the VEO who identified him to them. PW2's evidence was corroborated by PW3 the exhibit keeper who confirmed to have received the said 20 sacks of cannabis sativa from PW2 on 26/08/2023 which exhibit he identified before the Court and kept them, until when he was instructed on 08/09/2023 to issue them to the case investigator Cpl. Deogratias (PW4) who took them also to the Government chemist (PW1) for testing after sample collection exercise and later on the same day returned to him by PW4 as displayed in the Court register book PF16 (exhibit PE4). The issuing out of the said exhibit was confirmed by PW4 who also testified to have handed the same to PW1 and returned it back to PW3 for safe custody while using sample submission form (exhibit PE5), Sample receipt notification (exh. PE6) and chain of custody form (exh. PE7). In his evidence PW5 (VEO) who was in company of search team led by PW2 had it that, when conducting search in absence of the accused person after the door

was found unlocked, the later whom he identified as Ibrahim Juma Nchira surfaced where the certificate of seizure was filled in his presence and PW5 signed it as an independent witness. PW2 and PW5 in their evidence both stated that, after the search exercise was complete the said 20 sacks of cannabis sativa were labelled 'TB' the mark which was identified by all witnesses who dealt with the exhibit. Lastly was PW1 who testified to have collected the samples from the said 20 sacks of cannabis sativa that were handed to him by PW4 at Kondoa Police station area before he transferred it to Dodoma for testing in their laboratory where he confirmed to be narcotic drug known as cannabis. It is this witness who said to have prepared a report which was tendered and admitted as exhibit PE1. In short that was prosecution case. As to the accused person during his defence, denied any involvement in the commission of the offence accused with be it cultivation or sale of cannabis. He informed the Court that, on the fateful day was arrested 100 meters from 6 his house coming from making announcement concerning TASAF to its beneficiaries as directed by the suburb chairman before he was taken to the house of his brother's son one Anas Ibrahim Idd Nchira where the alleged 20 sacks of cannabis are alleged to have been retrieved from as the same were outside. And that, after his arrest was not allowed to go home instead taken straight to the police station. He denied to have signed the certificate of seizure at the place of his arrest as stated by PW2 rather claimed to have been forced to so sign at the police station. Thus prayed the court to dismiss the charge against him and set him free. Having revisited the evidence adduced by both parties, before I embark on determination of the issue as to whether the information filed by the prosecution was proved on the required standard against the accused person, I find it worth to revisit the law related to proof of criminal cases so as to serve as guideline to this Court when discharging its noble duty of dispensing justice to parties in this case. It is a living principle of law under sections 110(1) and (2) and 112 of the Evidence Act, [Cap. 06 R.E 2022] that, whoever alleges existence of any fact and requires the Court to enter judgment in his favour must exhibit existence of that particular fact since the burden of so proving lies on him. As to the 7 standard of proof in criminal matters, the law under section 3(2)(a) of the Evidence Act sets it to be beyond reasonable doubt. Regarding the burden of proof again the law is settled in that, the same never shifts unless otherwise provided by statute or any other written law. The legal stance is so as suspicion alone is insufficient evidence in proving accused's guilty, more so in serious offence attracting capital and stiff punishment such as murder, trafficking in narcotic drugs, statutory rape, etc. See also the cases of Mohamed Said Matula Vs. R [1995] T.L.R. 3 (CA), Mneney Vs. R (Criminal Appeal No. 341 of 2015) [2016] TZCA 57 and Pascal Yoya @Maganga Vs. Republic, Criminal Appeal No. 248 of 2017 (CAT- Unreported) Tanzlii. It is it also trite law that, accused person is under no duty to prove his innocence but rather raise doubts on the prosecution case. See the case of Aburaham Daniel Vs. R, Criminal Appeal No. 6 of 2007, (CAT-unreported). It is so as conviction will never base on weakness of defence case but rather strength of prosecution case. See the cases of Mohamed Haruna @ Mtupeni and Another Vs. R, Criminal Appeal No. 259 of 2007 (CAT-unreported). With the above guiding principles in determination of any criminal matter, it is now opportune for this Court to consider and determine accused's fate basing on the evidence adduced by the prosecution witnesses as held in the case of Nathaniel Alphonse Mapunda and Benjamin Mapunda Vs. R

[2006] TLR 395. From the evidence of PW2, and PW5 this Court is satisfied that, the alleged 20 sacks of cannabis as confirmed by PW1 to be through the Government chemist report (exhibit PE1) were seized from the house at Mafai hamlet, handed to the exhibit keeper (PW3), submitted and tested by PW1 before it was tendered in court as exhibit PE2 as exhibited by the evidence of PW2, PW3 and PW4 and the court exhibit register (exh. PE4), sample submission form (exh. PE5), Sample receipt notification (exh. PE6), and the chain of custody record form (exh. PE7). What remains in dispute is whether the said 20 sacks of cannabis sativa were retrieved or seized from accused house. As hinted above the accused is faced with the charge of Trafficking of Narcotic Drugs, Contrary to sections 15(1)(a) and (3)(iii) of DCEA as amended, read together with paragraph 23 of the First Schedule and sections 57(1) and 60(2) of the EOCCA, hence an economic offence. Section 15(1)(3) and (3)(iii) of DCEA as amended read: 15.-(1) Any person who-

- (a) traffics in narcotic drug or psychotropic substance; commits an offence and upon conviction shall be sentenced to life imprisonment. 9
- (3) For purposes of this section, a person commits an offence under subsection (1) if such person traffics- (iii) cannabis and or khat weighing more than fifty kilogram. From the above exposition of the law, in this case the prosecution is enjoined to prove to the Court to the required standard that, the accused person was trafficking narcotic drug meaning cannabis sativa (bongi) weighing more than 50 kilograms. The term trafficking is defined under section 2 of DCEA to mean the following: “trafficking” means the importation, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance any substance represented or held out by that person to be a narcotic drug or psychotropic substance or making of any offer. In the present case the prosecution is contending through evidence of PW2 and PW5 that the said 20 sacks of cannabis sativa were retrieved or seized from the accused’s house the assertion which he vehemently contested deposing that, the said house is not his as he was arrested a distant from his house and taken to the house of Anas Ibrahim Idd Nchira where he found sacks of cannabis sativa. It was held in the case of Pascal Yoya @Maganga (supra) that, an accused does need not prove his innocence 10 rather to raise some reasonable doubt on the prosecution case. In view of the above legal stance the prosecution was therefore duty bound to prove to this court’s satisfaction that, the accused was either in possession or storage of the said substance of the purposes of sale, exportation or delivery to someone else, in which its reliance is placed on the evidence of PW2 and PW5 and the certificate of seizure (exh. PE3). A critical evaluation of that evidence has revealed some contradictions and inconsistencies in it. I am alive to the settled principle of the law that, where the testimony by witnesses contains discrepancies and contradictions, the court has the duty to address and try to resolve them and where possible to decide whether they are minor or they go to the root of the matter. See the cases of Dickson Elia Nsamba Shapwata and Another Vs. R, Criminal Appeal No. 92 of 2007, Marando Slaa Hofu and 3 others Vs. R, CAT Criminal Appeal No.246 of 2011 and Kavula William and Another Vs. R, Criminal Appeal No. 119 of 2020 (CAT-unreported). Applying the

above principle to the facts of this matter, it is noted that, while both PW2 and PW5 deposed to have found the accused absent at his house and the door unlocked when decided to conduct search therein before he resurfaced in the course of removing the said 20 sacks of cannabis from his house where he admitted to be his, when cross examined PW2 who was also the executing officer or leading officer contradicted their evidence when confessed that, they met the accused person after completion of search exercise at his house and on the way to another house for continuation of search exercise. And that, that is when he was arrested and taken back to the alleged house where the said cannabis sativa was allegedly retrieved from. To avoid putting my words into witness's mouth this is what PW2 told the court during cross examination by defence counsel: "Yes I recorded my statement on 26/08/2023 and signed it. Yes, it is true I said after conducting search in the accused house on the way to another house we met the said accused person. Yes it is true I said it is the VEO who identified the said accused to us. Yes it is true after arresting him I said we went back to his house." From the above excerpt of PW2's evidence, the evidence which I have no reason to doubt this Court finds material contradictions going to the root of the case as it is doubtful whether the search exercise was conducted or concluded in the presence of the accused person as claimed by PW2 and PW3, if at all they met him after completion of search exercise at his alleged house and on the way to other houses for continuation with the search exercise. In my humble view PW2's evidence furthers accused defence in that he was arrested far away from his house and taken to the house of one 12 Anas Ibrahim Idd Nchira where he found sacks of cannabis sativa outside. On the same beats, it is doubtful as to whether the accused persons signed the certificate of seizure (exh. PE3) at the alleged house and soon after completion of the said search exercise as claimed by PW2 and PW5 since he could not be present at two places at the same time. The evidence of PW2 and PW5 aside, the certificate of seizure itself (exh. PE3) allegedly prepared by PW2 and signed by both witnesses cannot survive the attack to enable it corroborate prosecution's case. Its close scrutiny by this Court has disproved PW2's testimony that, after its preparation he signed the same as there is no his signature therein despite of being executing officer. Instead, the same seem to have been signed by the OCCID as executing officer despite of the fact that he did not conduct the said search in person at the alleged accused home as rightly conceded by both PW2 and PW5 in their testimonies, something which does doubt annuls it as the law requires the document to be signed by the police officer who executed the search. I dismiss the explanation by PW2 that, since the OCCID was the leader of the search team he ought to have signed the certificate of seizure and that is why he signed it, as he was never the executing officer for the purposes of search purportedly conducted at the accused home in 13 Mafai suburb. In view of the above glaring discrepancies in prosecution evidence, it is doubtful as to whether the said 20 sacks of cannabis sativa were recovered from the accused person as he might have been associated with it when arrested after completion of the search, the doubt which is resolved in favour of the accused person. As there is no any other evidence proving to this court's satisfaction that, the said 20 sacks of cannabis sativa were found in possession or retrieved from the accused person's home, it is the findings of the Court that, the prosecution has failed to prove the information of Trafficking of Narcotic

Drugs, Contrary to sections 15(1)(a) and 3(iii) of Drug Control and Enforcement Act, [Cap. 95 R.E 2019] (the DCEA) as amended, read together with paragraph 23 of the First Schedule and sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E 2022] (EOCCA), levelled against the accused person. I therefore acquit him of that charge and order for his discharge with immediate effect unless otherwise lawfully held. It is so ordered. Dated at Dodoma this 18th of December, 2024. E. E. KAKOLAKI 14 JUGDE 18/12/2024. Court: The Judgment has been delivered at Dodoma today on 18 th day of December, 2024, in the presence of the accused person in person, Mr. Lucas Komba, Advocate for the Accused person, Ms. Jackline Manyala, State Attorney for the Republic and Ms. Veradina Matikila, Court clerk. Right of appeal explained. E. E. KAKOLAKI JUGDE 18/12/2024. 15

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