

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

AT MOROGORO

ECONOMIC CASE NO. 8 OF 2023

THE REPUBLIC

VERSUS

MUSA IBRAHIM KIPEMBA

JUDGMENT

29th May & 13th June, 2024

KISANYA, J.:

The accused, Musa Ibrahim Kipemba, was brought before this court on charges of trafficking in narcotic drugs, in violation of section 15(1)(a) and 3(iii) of the Drug Control and Enforcement Act [Cap 95 R.E 2019] (referred to as "the Drug Act"), as amended, read together with paragraph 23 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act [Cap 200, R.E 2019] (referred to as "the EOCCA").

The charge details state that, on December 6, 2020, at Junior Seminary Bigwa Ward along Morogoro -Dar es Salaam road within Morogoro District in Morogoro Region, the accused was found trafficking in narcotic drugs, to wit; 81 sulphate bags of cannabis sativa, commonly known as "bhangi," weighing 1591.55 kilograms. He pleaded not guilty to the charges, resulting in the case proceeding to trial.

During the trial, both parties were represented by learned counsel. The prosecution team, consisting of Senior State Attorney Ms. Janethreza Kitily, with assistance from State Attorneys Ms. Theodora Mlelwa and Mr. Jumanne Milanzi, presented the case against the accused with diligence and expertise. On the adversary part, the accused, Musa Ibrahim Kipemba, was represented by Mr. Aziz Mahenge, a learned advocate who provided a vigorous defence throughout the proceedings.

Determined to prove its case, the prosecution marshaled a lineup of ten witnesses namely: Noel Isack Kaaya (**PW1**), E.8949 D/Sgt. Kwilinus (**PW2**), WP 3987 D/Sgt. Ashura (**PW3**), G.9197 Cpl. Justine Daniel Daudi (**PW4**), James Henry Daudi (**PW5**), F3462 D/Sgt. Adriano Jonas Mwakipokile (**PW6**), G.8086 D/Cpl. Lifa (**PW7**), Said Salum Rashid (**PW8**), Calvin Edward Kubilu (**PW9**), and Gebo Shaban (**PW10**).

The said witnesses provided testimonies that were corroborated by twelve exhibits to wit, 81 sulphate bags containing dry leaves of cannabis sativa (**Exh. P1**), Government Chemist Analyst Report (**Exh. P2**); Sample Submission Form, No. DCEA 001 (**Exh. P3**), Court Exhibit Register -PF16 (**Exh. P4**), a vehicle and trailer tank bearing registration numbers T.486 DSU and T.275 BXB, respectively (**Exh. P5** collectively), Certificate of Seizure (**Exh. P6**), Sample Receipt Notification Form, No. DCLA 01 (**Exh. P7**), TRA letter dated December 28, 2020 (**Exh. P8**), TRA letter dated April 8, 2021 (**Exh. P9**), Two employment contracts between Soud Industries Limited and Mussa

Ibrahim Kipemba (**Exh. P10**), Delivery Note dated November 27, 2020 (**Exh. P11**), Driver's Trips Printout (**Exh. P12**).

A brief account of the evidence adduced by the prosecution is as follows. On December 6, 2020, Sgt. Ashura (**PW3**), a traffic officer based in Morogoro, led a team that was conducting road safety checks at Junior Seminary area within Morogoro District. Other officers in the team included, Cpl. Justine (**PW4**), Cpl. Ramadhani and PC Masoud. At around 10:00 hours, **PW3** received information from a confidential informant about a vehicle, registered as T486 DSU, pulling a trailer tank, registered as T275 BXB, and asked her to verify with its contents. Shortly thereafter, **PW3** spotted a vehicle matching the description leaving the Morogoro town heading towards Dar es Salaam. She stopped the vehicle and informed the driver of his intention to conduct an inspection

In the course of the inspection, **PW3** instructed Cpl. Masoud to inspect the driver, including requesting his driving license. She further directed **PW4** to climb on top of the trailer tank to verify its contents, with **PW10**, a passerby, present, as a witness. According to **PW3** and **PW4**, the driver when inspected by Cpl. Masoud, requested to go to relieve himself in the nearby bush but disappeared immediately, abandoning the vehicle at the scene. At the same time, **PW4**, on top of the vehicle, confirmed seeing sulphate bags inside the trailer tank. To prevent traffic congestion and due to the driver fleeing, **PW3** directed **PW4** to drive the vehicle to Morogoro Police Station for further

action, including a search. **PW10** accompanied both **PW3** and **PW4** to the police station.

At the police station, **PW3** oversaw the search, during which **PW5** was among those directed by the police to remove sulphate bags from inside the trailer tank. According to **PW3**, **PW4**, and **PW10**, a total of 81 sulphate bags containing dry leaves were removed from the four chambers of the trailer tank, with **PW3** marking them with numbers 1 to 81. They also stated that, other items found in the vehicle included a blue tarpaulin, two black nylon bags, three bags (two military camouflage and one gray), all containing clothes. The gray bag also contained a diary, passport, and other documents bearing the name of Masubo Msoli Mtandi. **PW3** seized these items, along with the vehicle, trailer tank and 81 sulphate bags through a certificate of seizure (**Exh. P6**), which was witnessed by **PW10**, as an independent witness.

Following the seizure, **PW3** handed over custody of all seized items to the exhibit keeper, PW2 D/Sgt. Kwilinus. **PW2** registered them on the court exhibit register-PF16 (**Exh. P4**) and assigned them Entry No. 479/2020. He testified that he was under the custody of the said items from that day and on December 28, 2020, he removed the 81 sulphate bags from the exhibit room for weighing and analysis by Noel Isack Kaaya (**PW1**), a Government analyst, from the Government Chemist Laboratory Agency (GCLA). **PW1** accounted to have received the 81 sulphate bags from D/Cpl Lifa (**PW7**). He testified that upon receiving them, he weighed them, took samples, and then returned them

to **PW7**. The prosecution relied on the samples submission form (**Exh. P3**) and sample receipt notification form (**Exh. P7**) to exhibit the movement of the sulphate bags between **PW7** and **PW1**.

PW1 went on stating the net weight of the dry leaves in the sulphate bags was 1,591.55 kilograms. It was his further testimony that, upon arrival at the GCLA laboratory in Dodoma, he conducted preliminary and confirmatory tests, both of which confirmed that the samples taken from the 81 sulphate bags were cannabis sativa. Based on these results, **PW1** prepared a report dated December 31, 2020, indicating that the leaves in the 81 bags were cannabis sativa, with a weight of 1,591.55 kilograms.

Meanwhile, the vehicle owner, Soud Industries Limited, through their officer, Calvin Kubilu (**PW9**) was tracking all vehicles, including the vehicle and trailer tank, using the UTRACK Africa system. Upon noticing that the vehicle had stopped for a long time and the system indicated it was at Morogoro Police Station, **PW9** informed the company's management, who sent the nearby drivers, who later confirmed about seizure of the vehicle by the police. Therefore, Soud Industries Limited sent Said Salim Rashid (**PW8**), one of its directors, to follow up on the matter. Upon arriving to the police station, **PW8** informed **PW7** that the driver of the vehicle was Mussa Ibrahim Kipemba, who was coming from Mara Region where he had delivered a cargo. After **PW9** submitted relevant documents including, employment contracts between Soud Industries and the accused (**Exh. P10**), a delivery note (**Exh. P11**), and a

road trips (**Exh. P12**) regarding the vehicle in question, the police were satisfied that the owners were not involved with the 81 sulphate bags. However, **PW8** was directed to collaborate to ensure arrest of the driver of the vehicle.

As indicated earlier, Masubo Masoli Mtundi's documents, including his passport, were found inside the vehicle. **PW7** testified that during the investigation, the said Masubo admitted that the bag containing the documents belonged to him and that his wife, who was in Mara, gave it to the accused to dispatch it to Dar es Salaam. It was his further evidence that, due to insufficient evidence, the DPP dropped the charges filed against Masubo in the Morogoro District Court.

Following Masubo's discharge, **PW2** returned his items, including the bag and documents. Similarly, Soud Industries Ltd were returned the vehicle and trailer under the condition that they should not make any trips outside the country, change its appearance, and bring it when required.

The accused was arrested a year and a half later, on June 2, 2022, by D/Sgt. Adrian (**PW6**). According to **PW6**, **PW7**, and **PW8** the accused was arrested at the immigration office, Kurasini, Dar es Salaam, where he had applied for passport. After his arrest, he was taken to Morogoro where he was charged with the offence he is facing.

After the prosecution concluded its case, the court determined that the accused had a case to answer. This prompted the court to invite him to present his defence to exculpate himself from the alleged wrongdoing. The accused opted to testify under oath. He tendered his driving licence, which was admitted in evidence as **Exh. D1**, and he did not call any other witnesses

During his testimony, the accused categorically denied committing the offence of trafficking in narcotic drugs. He testified that he resides at Kigogo, Dar es Salaam, with his father, Ibrahim Kipemba, and works as a day laborer at Driver Connect, located at Lindi Street, Ilala, where his duties involve delivering documents to various locations. The accused contended that **PW8** harbors a grudge against him due to a prior incident where **PW8** went to Driver Connect and accused the company of poaching their drivers for other companies. It was his testimony that, when **PW8** asked for the name of the person involved in poaching drivers, **DW1**'s name was mentioned. The accused forcefully denied ever being an employee of Soud Industries or working as a driver. Furthermore, he refuted the claim that he was arrested at Kurasini, stating instead that he was apprehended at Kigogo and subsequently taken to Magomeni Police Station and not Chang'ombe Police Station, as stated by **PW6**. Therefore, he implored the court to find him was not involved with the charges and acquit him.

Having examined the evidence presented by the prosecution and the defence, the main issue before the court is whether the prosecution has

proved the case against the accused beyond a reasonable doubt. According to section 15(1)(a) and (3)(iii) of the Drug Act, for the offence of trafficking in narcotic drugs to be proved, the prosecution must prove that the accused trafficked in narcotic drugs; and that if the narcotic drug involved is cannabis sativa, as in the present case, it must be established that it weighed more than fifty kilograms. Notably, trafficking in narcotic drugs may be carried out through various means defined under as per section 2 of the Drug Act. These means include importation, exportation, buying, selling, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery, or distribution.

To effectively determine whether the prosecution has discharged its duty, the first question to address is whether the 81 sulphate bags (**Exh. P1**) were recovered from the trailer tanker being towed by vehicle T.486 DSU. This issue should not detain the court. The evidence adduced by **PW3** and **PW4** indicates that, upon receiving information, **PW3** stopped the vehicle T.486 DSU, which was towing the trailer tanker T.275 BXB. It is also evident that, an inspection conducted by **PW4** at the scene, in the presence of the independent witness **PW10**, revealed the presence of sulphate bags inside the trailer tanker. As the driver fled, abandoning both the vehicle and the trailer tanker, **PW4**, along with **PW3** and **PW10**, drove the vehicle and its trailer tanker to the police station. There, a search supervised by **PW3** led to the retrieval of 81 sulphate bags from inside the trailer tanker. This account is corroborated by the certificate of seizure (**Exh. P6**) filled by **PW3** and signed

by **PW10** as a witness to the search. The prosecution witnesses (PW4, PW5 and PW10) affirmed and explained during cross-examination that the tanker had four chambers/compartments, where the sulphate bags were discovered.

Based on the aforesaid evidence, the Court is convinced that the 81 sulphate bags (**Exh. P1**) were indeed recovered from inside the trailer tanker being towed by vehicle T.486 DSU. Thus, this question is resolved in the affirmative.

The second question pertains to whether the 81 sulphate bags (**Exh. P1**) contained 1,591.55 kilograms of cannabis sativa. The prosecution's case relied heavily on the testimony of a Government analyst (**PW1**), supported by the Analyst Report (**Exh. P2**). According to **PW1**, on December 28, 2020, he received the 81 sulphate bags from **PW7** at Morogoro Central Police Station. In their respective testimonies, the exhibit keeper (**PW2**) and investigator (**PW7**) asserted that the 81 sulphate bags submitted to **PW1** were the same bags retrieved from the trailer tanker.

On his part, **PW1** stated that, after individually weighing each sulphate bag, the total net weight of the leaves in all the bags was determined to be 1,591.55 kilograms. He further described his process of extracting samples from the bags on-site and conducting both preliminary and confirmatory tests at the GCLA in Dodoma. **PW1** testified that, his analysis confirmed the presence of Tetrahydrocannabinol (THC), a chemical exclusive to cannabis leaves. He was firm that these findings conclusively established that the

samples contained cannabis sativa. It was his further evidence that he concluded the analysis process by preparing and signing a report (**Exh. P2**). This report unequivocally states that the 81 sulphate bags indeed contained narcotic drugs, namely cannabis sativa weighing 1,591.55 kilograms.

It is noteworthy that under section 48A(2) of the Drug Act, a report signed by the Government Analyst is admissible as evidence of the facts stated therein without formal proof, and such evidence is considered conclusive unless rebutted.

In this case, **Exh. P2** was admitted into evidence without any objection from the defence. The court has further noted that cross-examination did not undermine **PW1's** credibility or the validity of his analysis reported in **Exh. P2**. For example, the defence raised an issue about one sulphate bag missing the signature, date, and lab number of **PW1**. However, **PW1** clarified that this was likely an oversight. The court has taken into account, a per **PW7's** testimony, that the sulphate bag in question bear label No. 9 and the case number which were said to have been inserted by **PW3**. Considering further that **PW1** explained he worked on all 81 sulphate bags and took samples from each, it is reasonable to accept his account that he might have inadvertently missed marking one bag. This is further supported by his analysis report (**Exh. P2**), which confirms he worked on 81 sulphate bags. Therefore, the absence of markings by **PW1** on one sulphate bag does not invalidate the analysis.

In light of the unchallenged testimony of **PW1** and the conclusive nature of **Exh. P2**, the court is firmly convinced that the 81 sulphate bags (**Exh. P2**) contain narcotic drugs, namely cannabis sativa, with a total weight of 1,591.55 kilograms.

Having resolved the preceding questions affirmatively, the crux of the matter is whether the accused was driving the vehicle and its trailer in question. This determination is crucial as it aims to establish whether the accused person transported or was found in possession of **Exh. P1**, which are means of "trafficking" in narcotic drugs defined under section 2 of the Drug Act.

As shown earlier, **PW3**, **PW4**, and **PW10** consistently testified that the driver fled immediately after the vehicle was stopped for inspection. **PW8** and **PW9** provided evidence that the vehicle and its trailer belonged to Soud Industries Ltd, and that the accused had been the driver since March 2020. To substantiate this claim, they relied on employment contracts (**Exh. P10**) showing that the accused was employed by Soud Industries Ltd since 2018. **PW8** and **PW9** explained that the accused was returning with the vehicle from Mara, where he had delivered fuel for their client, Oryx Company Ltd, a fact supported by the delivery note (**Exh. P11**).

Furthermore, **PW9** mentioned tracking the company's vehicles, including the vehicle driven by the accused, and he was surprised to see the vehicle parked at Morogoro Police Station for an extended period. He stated that this

prompted him to inform the management, which directed nearby company drivers to go the police station. It evident that, after confirming the vehicle's presence and receiving a call from the Regional Crimes Officer of Morogoro, **PW8** went to Morogoro where he informed the police that the driver was the accused.

It is the considered opinion of this court such evidence is sufficient to establish that the accused was driving the vehicle and trailer tank in which the 81 sulphate bags were seized. Before reaching this conclusion, the court has considered several issues from the cross-examination of the prosecution witnesses and the defence's testimony, as follows:

Firstly, there is no dispute that the TRA letter (**Exh. P8**) shows the owner of the vehicle and trailer as Sound Industries Limited instead of Soud Industries Ltd. Legally, Soud Industries Ltd and Sound Industries Ltd are different entities. Although the explanation for this discrepancy in **Exh. P8** ought to have been provided by the author (TRA), the court has noted that the owner's address on **Exh. P8** matches the address of Soud Industries Ltd on the vehicle (**Exh. P5**) and employment contracts (**Exh. P10**). In any case, the pointed discrepancy does not affect the oral evidence provided by **PW8** and **PW9** regarding the vehicle's ownership, especially since there was no evidence showing that Sound Industries Ltd claimed ownership of the vehicle and/or trailer.

Secondly, the accused's testimony indicated that the delivery note (**Exh. P11**) named Mussa Kipemba as the driver who traveled to Mara, while his name is Mussa Ibrahim Kipemba appearing in **Exh. D1**. However, the court finds that the said discrepancy is not sufficient to conclude that Mussa Kipemba and Mussa Ibrahim Kipemba are two different people. Apart from the common knowledge some people prefer to use two names only, **PW8** and **PW9** identified the accused as the employee referred to in the delivery note and employment contracts. Therefore, the defence's argument regarding the names on the delivery note does not go to the root of the case.

Thirdly, the accused claimed that he was not an employee of Soud Industries Ltd and that he was not at the crime scene when the offence occurred. Regarding the alibi defence, the court notes that the accused failed to comply with the requirements of section 42(1) and (2) of the EOCCA, as he did not notify the court during the preliminary hearing or provide details of the alibi before the prosecution closed its case. Moreover, **PW8** and **PW9**, who claimed that the accused was driving the vehicle from Mara, were not questioned about the accused's alleged presence elsewhere. Therefore, the court finds no reason to disregard their testimonies based on belated alibi. Had the accused provided alibi details, the prosecution could have investigated further, including contacting his employers or verifying his location at the time when the offence was committed.

Lastly, it is trite law that witnesses' credibility is generally presumed unless there are compelling reasons to doubt their testimony. This principle was emphasized in the case of **Goodluck Kyando vs. R** [2006] TLR 363, where the Court of Appeal held that every witness is entitled to credence and their testimony must be accepted unless there are good and cogent reasons for not believing them. Assessing witness credibility involves evaluating the coherence of their testimonies and their demeanor.

In the instant case, the court noted that PW5's testimony regarding the driver's presence at the scene conflicted with the accounts of other witnesses. Similarly, the court observed that PW5 appeared unsure when asked about the driver's presence at the police station. He also took time to respond to that question and seemed uncertain even when cross-examined about whether he was instructed to remove the sulphate bags while on bail or still in custody. Due to his demeanor and inconsistencies, the court finds PW5's testimony unreliable and will not consider it.

Even if PW5's testimony is excluded, the remaining evidence from **PW3**, **PW4** and **PW10** sufficiently establishes that the 81 sulphate bags were found in the trailer tanker. Their evidence is also direct and corroborative, confirming that the driver fled the scene. There is evidence of **PW8** and **PW9** who identified the accused as the driver of the vehicle and trailer. Throughout the trial, the credibility of the said witnesses remained intact, with no significant

contradictions or improbabilities emerging during cross-examination. Therefore, the court sees no reason to doubt their testimonies.

Based on the evidence that the accused was driving the vehicle and trailer found with the 81 sulphate bags (**Exh. P1**), which were confirmed to contain narcotic drugs, the prosecution has established that the accused engaged in trafficking narcotic drugs through transportation or possession.

Another crucial aspect of this case is whether the chain of custody of **Exh. P1** was duly preserved. This question is significant as it aims to establish if the sulphate bags found in the vehicle were indeed the ones analyzed by **PW1** and presented as evidence in court. Legally, it is essential and necessary in cases of this nature to provide proof of the exhibit's movement from the point of seizure until it is produced in court. The legal stance is clear that the chain of custody can be verified through documents, oral evidence, or both. See the cases of **Marceline Koivogui vs. R**, Criminal Appeal No. 469 of 2017 and **Chukwudi Denis Okechukwu and 3 Others vs. R**, Criminal Appeal No. 507 (both unreported), wherein the Court of Appeal emphasized this stance.

In this case, the evidence concerning the movement of **Exh. P1** was established through both documentation and oral testimony. Starting with the seizure stage, the oral evidence of **PW3, PW4, and PW10** shows that 81 sulphate bags (**Exh. P1**) were retrieved from the vehicle. The said seizure of the 81 sulphate bags was documented in the certificate of seizure (**Exh. P6**).

The seizing officer (**PW3**) further detailed that after seizing the 81 sulphate bags, she marked them from 1 to 81 with the case number MOR/IR/9183/2020 and then handed them over to the exhibit keeper (**PW2**) for custody. **PW2** confirmed receiving these 81 sulphate bags from **PW3** and stated that he registered them in the Court Exhibit Register (**Exh. P4**) under entry number 479/2020. This entry number was also written on all 81 sulphate bags and served as an identification mark for some witnesses. Therefore, the movement of **Exh. P1** between **PW3** and **PW2** was established through both oral evidence and documentation, specifically **Exh. P4**.

The exhibit keeper (**PW2**) testified that he stored **Exh. P1** in the exhibit room until December 28, 2020, when the sulphate bags were taken from the exhibit room and submitted to **PW1** from GCLA for weighing and sampling process. Both **PW2** and **PW7** were present when **PW1** conducted the weighing and sampling. It is evident that, after completing this process, **PW1** returned the exhibits to the police for further storage.

Although PF16 (**Exh. P4**) does not show that the 81 sulphate bags were ever removed from the exhibit room, the oral evidence of **PW2**, **PW7** and **PW1** confirms that the said exhibits were indeed taken from the exhibit room or store. Regarding how the sulphate bags reached the chemist (**PW1**), the sample submission form (**Exh. P3**), sample receipt notification (**Exh. P7**), analyst report (**Exh. P2**), and even **PW1's** oral testimony point out that **PW7** was the presenter. The court recognizes that there is no written evidence of

how the exhibit moved from the exhibit keeper (**PW2**) to **PW7**. However, the oral testimonies of **PW1**, **PW7** and **PW2** indicate that both **PW7** and **PW2** were both present when **Exh. P1** was handed over to **PW1** for weighing and sampling process.

Similarly, concerning the return of the sulphate bags to the exhibit keeper (**PW2**), the evidence of **PW1** and **PW7** shows that **PW1** handed them over to **PW7**, in the presence of **PW2**. It was the testimony of **PW7** and **PW2** that, **PW2** received the 81 sulphate bags (**Exh. P1**) for continued custody. Lastly, **PW2** accounted that he kept the said exhibits until they were required before the court as evidence.

Considering the foresaid analysis of oral testimonies and documentary evidence, this court is satisfied that the chain of custody for the 81 sulphate bags (**Exh. P1**) was indeed preserved.

Another matter to consider is whether the defence evidence has raised any doubts about the prosecution's case. This question is based on the legal principle that requires the court to consider the defence case. The court has already evaluated the accused's defence in the course of determining the preceding issues. As noted earlier, some of the defence's contentions include the claim that the accused was not an employee of Soud Industries Ltd, which allegedly owned the vehicle and trailer in question, and that he was not present at the scene on the day of the incident.

Regarding the *alibi* defence, the court has noted that this defence was presented contrary to the legal requirements set under section 42(1) and (2) of the EOCCA, as the accused failed to notify the court during the preliminary hearing or provide the prosecution with the particulars of his *alibi* before the closure of their case.

Concerning the claim that the accused was not an employee of Soud Industries Ltd, the record clearly shows that the defence did not challenge the evidence of **PW8** and **PW9** or **Exh. P10**, which indicate that the accused was an employee of Soud Industries Ltd. The accused claimed that **PW8** harbored grudges against him, alleging that he (**PW8**) had accused him of persuading **PW8**'s drivers to move to Drivers Connect, where he (the accused) was employed. Given that no questions about any alleged grudges between **PW8** and the accused were ever posed to the prosecution witnesses (**PW8** and **PW9**), the court finds such claims to be afterthoughts. Therefore, the defence's argument that the accused was not employed by the vehicle and trailer owners and the alleged grudges between him and **PW8** cannot be considered to have casted doubt on the prosecution's case.

There is also a claim by the defence that the accused was arrested at his home located at Kigogo area and not at the immigration office, Kurasini area, as **PW4** and **PW8** testified. The court sees this as an afterthought as well, because the defence did not cross-examine **PW4** and **PW8** about the arrest location, implying acceptance of their (**PW4** and **PW8**) testimony regarding

the location of the arrest. Moreover, the location of arresting the accused does not negate the other evidence showing that he was driving the vehicle and trailer that contained the 81 sulphate bags (**Exh. P1**).

Moreover, the court has duly noted the absence of Masubo Msole Mtandi or his wife's testimony, the latter being claimed to have provided the driver with the documents found in the vehicle. However, the lack of their testimony does not undermine the prosecution's case, in light of the evidence indicating that the vehicle containing the 81 sulphate bags (**Exh. P1**) was being driven by the accused and that he fled the scene upon being stopped for inspection.

Lastly, it is on record that during the committal proceedings, the trailer tank (part of **Exh. P5**) was not specifically listed among the exhibits to be tendered during the trial as required by rule 8(2) of the Economic and Organised Crime Control (The Corruption and Economic Crimes Division) (Procedure) Rules, 2016, GN No. 267 of 2016. Although the registration No. T275 BXB of the trailer tank was mentioned, there was no indication that the prosecution intended to tender it during the trial. The substance of evidence that was made known to the accused was limited to the vehicle. Since no notice for additional exhibits was presented before the trailer tank was tendered as evidence, the court ought to have not admitted it in evidence under section 289(1) of the Criminal Procedure Act, Cap. 200, R.E. 2022. However, even if the trailer tank is expunged from the record, this does not

undermine the oral evidence provided by the prosecution witnesses, which is sufficient to prove that **Exh. P1** was retrieved from the trailer tank.

Based on this analysis, it is clear that the defence has not raised any substantial doubts about the prosecution's case. Therefore, the court is convinced that the prosecution has proven, beyond a reasonable doubt, that the accused committed the offence of trafficking in narcotic drugs as charged.

In the event, the accused, Mussa Ibrahim Kipemba is found guilty and convicted of trafficking in narcotic drugs under section 15(1)(a) and 3(iii) of the Drug Control and Enforcement Act [Cap 95 R.E 2019], read together with paragraph 23 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2019] (now R.E. 2022).

Dated this 13th day of June, 2024.


S.E. KISANYA
JUDGE
13/06/2024

Court: Judgment delivered this 13th day of June, 2024 in the presence of Mr. Jumanne Milanzi, learned State Attorney for the Republic, the accused person and Mr. Aziz Mahenge, learned advocate for the accused person, all present through video link from the High Court of Tanzania at Morogoro. B/C Mr. Maiga present.


S.E. KISANYA
JUDGE
13/06/2024

SENTENCE

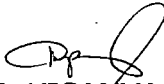
The accused stands convicted of trafficking in narcotic drugs, an offence that carries a maximum penalty of life imprisonment under section 15(1)(a) of the Drug Control and Enforcement Act [Cap. 95, R.E. 2019], read together with the proviso to section 60(2) of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2019]. This position finds support in the case of **Islem Shebe Islem vs R**, Criminal Appeal No. 187 of 2020 (unreported), where the Court of Appeal enhanced a sentence from thirty years to life imprisonment.

In that regard and despite the mitigating factors presented by the defence, the court is bound by the statutory sentencing provisions. Considering further the substantial quantity of cannabis sativa involved in this case (1591.55 kgs), the court finds it appropriate to impose the maximum penalty as set out by law.

Therefore, the accused, Mussa Ibrahim Kipemba is sentenced to life imprisonment in consonance with the dictates of section 15 (1) (a) of the Drugs Act (supra) and proviso to section 60(2) of the Economic and Organized Crime Control Act (supra). This sentence is intended to deter others and underscore the seriousness of drug trafficking offences.


S.E. KISANYA
JUDGE
13/06/2024

Court: Sentence pronounced on this 13th day of June, 2024 in the presence of the parties named earlier.


S.E. KISANYA
JUDGE
13/06/2024

Court: Right of appeal against the judgment and sentence is explained to the accused person.


S.E. KISANYA
JUDGE
13/06/2024

ORDER:

1. Since there is no indication that the owners of the vehicle and trailer tank were involved in the commission of the crime, it is hereby ordered that the vehicle with registration number T.486 DSU and the trailer tank bearing registration number T.275 BXB (Exhibit P5 collectively) should be returned to their rightful owners.
2. The 81 sulphate bags containing narcotic drugs (Exhibit P1) should be destroyed in accordance with the relevant laws. Until the destruction order is executed, Exhibit P1 shall remain in the custody of the Tanzania

Police Force.




S.E. KISANYA
JUDGE
13/06/2024