

**IN THE HIGH COURT OF ZANZIBAR**

**HOLDEN AT TUNGUU**

**CRIMINAL CASE NO, 109 OF 2022**

**THE DIRECTOR OF PUBLIC PROSECUTION**

**V.**

**REGIONALD DOMICIAN GABRIEL**

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**JUDGMENT**

***Dated: 27<sup>th</sup> February, 2023***

**S. HASSAN (J)**

The accused person Regionald Domician Gabriel was arraigned on the 21<sup>st</sup> November, 2022 for the charge of unlawful possession of bhangi contrary to **section 21 (1) (d)** of the Zanzibar Drugs Control and Enforcement Authority **Act No. 8 of 2021**.

In the particulars of offence, it is alleged that the accused person on the 29/09/2022 around 7:40am at Matemwe in the Northern B District in Northern Region of Unguja, was unlawful found with possession of "kipolo" coloured white and green which contained dry leaves alleged to be bhangi, also it is alleged that inside the "kipolo" was multi coloured bag which contained transparent plastic bag and inside the bag there was 180 packtes of dry leaves also alleged to be bhangi. The dry leaves weigh 1.8643kg.

Upon answering to the offence charged against him, the accused denied the charge and plea of not guilty was entered. On the 21/12/2022 the Prosecution submitted a complete record of evidence and thereafter the case was fixed to commence hearing on the 9/1/2023. To prove the charge against the accused person, the prosecution presented **5 witnesses** and tendered **2 exhibits**.

During the hearing of the case, the prosecution was represented by the learned State Attorney Mohamed Abdalla, while the accused person was unrepresented and defended himself.

**Mussa Fadhil Mzee (PW1)**, was the first witness called by Prosecution to testify and he stated that he is an officer of ZDCEA and his duties as operation officer is to arrest, charge and to appear in court to give evidence, and that he is in court to give evidence against the accused person Regionald Domician Gabriel who is charged with unlawful possession of dry leaves alleged to be bhangi. He further stated that on the 29/9/2022 around 6.30am he was in his office at ZDCEA he received a call and was tipped by his informer that there is a youth in Matemwe Mbuyutende dealing with drugs. The youth was well described to him by the informer. Instantly he and his fellow officer Suleiman Rashid Abdalla started the journey and went to Matemwe Mbuyutende and they arrived there around 7:40am. Upon arriving at Matemwe, he saw a youth sitting under the tree and he immediately identified the suspect based on the description he received from his informer. He then approached the suspect and put him under arrest. He further identified himself to the suspect that they are officers from ZDCEA and also asked the suspect to identify himself which he did by given his name as Regionald Domician Gabriel. Thereafter he asked the suspect to search him and during the search the suspect was holding a "kipolo" on his right hand colour white and green, inside the bag he saw dry leaves, he also saw a multi colour bag which contained inside it a transparent plastic bag which had 180 packets of dry leaves, all dry leaves alleged to be bhangi. After the search he cautioned the suspect for the offence he is suspected to commit which is unlawful possession of bhangi contrary to the law. He further stated that during the search of the suspect his fellow officer was witnessing. After that they left crime scene and headed back to their office with the suspect while the "kipolo" was under his custody. They arrived back at the office around 9:00 am. While in the office he counted again the packets and obtained the same number as before. After counting he opened a case file against the suspect with identification number **ZDCEA/HQ/IR/171/2022** at around 9:15am he put back the multi coloured bag inside the "kipolo" and sealed it with "lakiri" thereafter he handed over the "kipolo" to the exhibit keeper, officer Saada Mohd Foun for her safe custody. He further testified that he did all that while witnessed by his fellow officer Suleiman Rashid Abdalla and the suspect himself.

During cross examination he testified that he has a work experience at ZDCEA of 18 months and that he performed his duties according to the law. He further stated that at a crime scene the informer was not present but he managed to identify the accused based on the description given to him by

the informer that the suspect was tall, thin and had "rasta" in his head. He further stated that he found the accused holding the "kipolo" in his hand and he saw the accused under the tree and there was a house beside the accused. Furthermore he stated that he did not involve any one during arrest apart from his fellow officer who was his witness. He denied having drugs in their office. He went on to state that when a suspect drops the drugs they collect them and send them to the appropriate place. He denied that the alleged bhangi found in possession with the accused belong to the ZDCEA.

**Hajra Moh'd Haji (PW2)**, she is working as government analyst at Chief Government Chemist Laboratory Agency (CGCLA) and that her duties among others is to receive suspected exhibits such as dry leaves, heroine and blood from ZDCEA and she also goes to the lab for test and thereafter she prepare the analysis report. She further stated that she received from ZDCEA, an exhibit with a letter, she inspect the exhibit and after being satisfied they do a handing over by using form 018 with the officer from ZDCEA who brought the exhibit thereafter she keeps the exhibit in the cabin she uses to keep exhibits, she further submit a letter to the Head for assignment of the analysis test. After being assigned, she takes the exhibits to the lab, weigh the exhibit, take a small sample from the exhibit and she starts the test with colour test which show indication on suspected exhibit, she then do a second test to be sure by using TLC method which confirms what is under suspicion. After finishing the test she seal the exhibit with red "lakiri" which reads "chemical laboratory of Zanzibar" she then prepare the analysis report and hands it over to the ZDCEA officer who brought the exhibit. She went on to identify the analysis report by her name, her signature and stamps of the agency, thereafter she tendered the analysis report and after admission the analysis report was admitted in court and marked as **"exhibit P1"** she also tendered the "kipolo" coloured white and green and the same was admitted and marked as **"exhibit P2"**

During cross examination she stated that she is a gazzetted officer under Official Gazzete No. 6923 dated 15/7/2021 and that she met with the officer from ZDCEA who brought the exhibit at Maruhubi in the CGCLA office and that she took 2 days to complete the test on the exhibit, she returned the exhibit on the 28/10/2022 and she does not know the owner of the exhibit but she only knows the person who brough the exhibit.

**Suleiman Rashaid Abdalla (PW3)**, testified that he is working at ZDCEA as patrol officer responsible for arresting people suspected of dealing with drugs. He further testified that he is in court to give evidence in the case happened at Matemwe on the 29/9/2022 at around 7:40am. He remembered that on that date he was in the office and they received a tip from the informer that at Matemwe Mbuyutende there is a person dealing with bhanghi. They immediately left their office and proceeded to Matemwe with his fellow officer Mussa Fadhil Mzee. They arrived at Matemwe around 7:40am and found a youth sitting under the tree holding on his right hand a "polo" coloured white and green, they approached the youth and he witnessed his fellow officer arresting the youth. He went on to state that, he witnessed his fellow officer identify himself to the youth that they are officers from ZDCEA and his fellow officer asked the youth to identify himself which he did so by stating his name as Regionald Domician Gabriel. He further witnessed his fellow officer searching the suspect and also witnessed his fellow officer opened the "polo" and saw dry leaves also inside the "polo" was transparent plastic bag which contained 180 packets of dry leaves foiled in khaki suspected of being bhanghi. He further witnessed his fellow officer cautioned the accused for the offence of being found with unlawful possession of bhanghi. After that they left crime scene and went back to town to their office with the suspect while the exhibit "polo" was under the custody of his fellow officer. Officer Mussa. They arrived at Migombani their office around 9:00am and at the same time he witnessed his fellow officer open the case file against the suspect which had identification number ZDCEA/HQ/IR/171/2022, he also witnessed his fellow officer sealing the exhibit with "lakiri" and put the identification number ZDCEA/HQ/IR/171/2022 and at around 9:15am he witnessed his fellow officer handing over the exhibit to the exhibit keeper officer Saada Moh'd Fom for custody. He identified the accused in court and that he knew the accused from the date of arrest.

In cross examination PW3 stated that he was in the office when they received a tip from their informer and they went and arrived at the scene 2 of them. He further stated that there was a tree near the house and that he was present when the accused was arrested; he also stated that they did not involve any other person on the day of arrest. He further stated that they did not put any mark in the bag which was inside the "polo"

**Saada Moh'd Foum (PW4)** gave her evidence and stated that she is the exhibit keeper at ZDCEA and she remembered on the 29/9/22 at around 9:15am when she was in her office, Officer Mussa Fadhil Mzee handed over to her exhibit "kipolo" coloured white and green which was sealed with "lakiri" with identification number ZDCEA/HQ/IR/171/2022 and she kept it in the cabin special for keeping exhibits and the key of that cabin she uses alone. She also remembered on the 6/10/22 at around 10:30 am while she was in her office, officer Mbarouk Zahran Mbarouk went to collect the exhibit and she gave him the letter for analysis request and form 018 and the exhibit "kipolo" white and green sealed with "lakiri" ZDCEA/HQ/IR/171/2022 for the purpose of sending it to the government lab for analysis. And on the 28/10/2022 around 2:50pm the exhibit was returned to her by officer Zahran Mbarouk Zahran sealed with the "lakiri" from the government chemist with identification number ZDCEA/HQ/IR/171/2022 and she kept the evidence under her custody until it was needed in court as evidence.

In cross examination she denied receiving a phone Itel, a wallet which had Tzs 23,000/-. She also stated that she did not inspect the exhibit when handed over to her. She stated that she did not have in court a written document which shows that she had received the exhibit. She also testified that she kept the exhibit until it was needed in court. She further stated that the exhibit was sent for analysis on the 6/10/22 and she did not have in court the evidence which show the exhibit was sent for analysis on that date. She stated that she had identified the exhibit after it was returned from the government chemist as it had a "lakiri" from the government chemist and the signature of the analyst. She further stated that she cannot identify what was inside the exhibit.

**Mbarouk Zahran Mabrouk (PW5)** gave his evidence and testified that his role as officer from ZDCEA is to arrest and investigation on drugs cases. On case in hand he stated that he interrogated the accused, the witnesses in the case and he took the exhibit to the government chemist for analysis on the 6/10/2022 from exhibit keeper Officer Saada Moh'd Foum and he was given the exhibit at around 10:30am. He arrived at government chemist at around 11:00am and met with analyst Hajra Moh'd Haji and he handed over the exhibit to her with a letter and form 018. The exhibit was opened in his presence by analyst Hajra and he saw dry leaves and a multi coloured bag which contained a transparent plastic bag which also contained 180 packlets wrapped with khahi and white paper, inside the packets contained dry leaves

suspected of being bhangi. He went at the crime scene Matemwe Mbuyuni for investigation with Officer Mussa Fadhil Mzee. The accused was not present during investigation as he was under the custody of ZDCEA. He went back to collect exhibit on the 28/10/2022 at around 14:30pm where he met with analyst Hajra Moh'd who gave back the exhibit which was sealed by the "lakiri" of government chemist with identification number **ZDCEA/HQ/IR/171/2011** and also he was given analysis report and handing over form. The analysis report confirmed that the dry leaves were bhangi **weighing 1.8643kg**. After that he went back to the office and handed over the exhibit to exhibit keeper Saada Mohd Fom for her safe custody of the exhibit.

During cross examination he stated that he is not in court to give any false evidence and that he did to go with the accused person at crime scene during investigation. He also stated that he did not involve any person from accused side during investigation. He went at crime scene on 6/10/2022 and the incident took place on the 29/9/2022. He further stated that the crime scene is a residential place and there was a dispensary and in the middle is where the accused was arrested. He further stated that the multi colour bag was not marked and did know the days which the exhibit is required to stay at the government chemist.

On the 25/1/2022 the prosecution closed its case and the court found the accused has a case to answer and hence his right under **section 216 of the Criminal Procedure Act No.7/2018** was explained to the accused person and the accused opted to defend himself without calling any witness for his defence.

On the 8/2/2022 the accused person was the only witness for defence to give evidence, the court shall refer the accused person for the purpose of defence as **DW1**.

**Regionald Domician Gabriel (DW1)**, gave his evidence and testified that he remembered on the 29/09/2022 at Matemwe Mbuyutende in the Northern District A in the Northern Region of Unguja, at around 5:30am he was at home in his room clearing and heard the knocking in the front door of his house. He asked who is knocking and the people replied come out. He opened the door and received outside by 3 people. The people introduced themselves as officers from ZDCEA and they put him under arrest. The officers from ZDCEA informed him that they have his information that he

deals with illegal business of bhangi with his friend Hassani. He was searched and also his room was searched but the officers from ZDCEA did not find anything. Thereafter he was handcuffed and he was put in the car where he met with 2 other suspects and they were taken to Kidimni until on the 21/11/2022 at around 6:00am he was taken to the ZDCEA Office at Migombani and after that he was brought in court for the first time where he was charged for the offence of unlawful possession of narcotic drugs bhangi, where he denied the charge. He further explained that the charge sheet is defective because it does not state how the accused was arrested and he claimed that the whole prosecution case is cooked up against him. Moreover he explained that there is contradictions between the prosecution witnesses and that the arresting officer testified that he arrested the accused in the street and there was no house, while the co officer of the arresting officer who witnessed the arrest testified that the accused was arrested near the road and there is a dispensary and the house. The investigator testified that he went to the crime scene and found dispensary and unfinished house near the arresting place. He further stated that the form 018 admitted in court as exhibit read that he was arrested on the 1/10/2022 at Matemwe within Northern District A in the Northern Region, while the charge sheet state that he was arrested on the 29/9/2022 at Matemwe Mbuyutende within Northern District B in the Northern Region. In the end he wanted the court to look at the deficiencies he raised and do justice for both sides.

In cross examination DW1 stated that he lived at Matemwe Mbuyutende for 2 months and he is a casual labor worker and he knew few people there on that short period of 2 months. He admitted knowing Hassani and stated that Hassani is not a casual labor worker he has his kiosk and lives at Kinyasini. He did not know why himself and Hassani are accused of illegal business of narcotic drug bhangi. He further stated that he did not know any of the people who came to arrest him at his home.

Having heard the evidence from the prosecution witnesses and the defence side, this court in now task to make findings and give judgment on matter in hand by determine whether the prosecution has managed to prove the charge against the accused person Regionald Domician Gabriel beyond the standard required which is beyond reasonable doubt or not.

In this case it is not disputed that **Hajra Moh'd Haji (PW2)** in her testimony testified that she performed analytical test in the exhibit she

received from officer **Mbarouk Zahran Mbarouk (PW5)** and the test gave conclusive result that the alleged dry leaves is **bhangi weighing 1.8643kg exhibit P1**. What remains is for the prosecution to prove that the **exhibit P2** was found in the unlawful possession of the accused person. In order to do so, the prosecution has a duty to prove the case beyond reasonable doubt as held in the case of **Christian s/o Kaale and Rwekeza s/o Bernald v. R [1992] TLR 302**, the Court held as follows:

***“ the prosecution has a duty to prove the charge against the accused beyond all reasonable doubt and an accused ought to be convicted on the strength of the prosecution case”***

Moreover in the case of **Milburn v. Regina [1954] TLR 27**, the Court noted that:

***“ it is an elementary rule that it is for the prosecution to prove its cases beyond reasonable doubt and that should be kept in mind in all criminal cases”***

Having refreshed my mind on the duty of prosecution to prove the case beyond all reasonable doubt, now this court will make its findings and determine whether the prosecution has managed to prove the charged against the accused person in the required standard.

In order to establish that, I will first address the surrounding and circumstance of this case which lead to the arrest of the accused person there at Matemwe Mbuyuni.

As narrated by **PW1** who is the key witness from the prosecution is that, on 29/9/2022 he was in his office and received the call from his informer at around 6:30am and was informed that at Matemwe Mbuyuni there is a youth dealing with drugs and he instantly proceeded to Matemwe with his fellow officer **PW3**, The youth was well described to him by the informer. Instantly he and his fellow officer Suleiman Rashid Abdalla (**PW3**) started the journey and went to Matemwe Mbuyutende and they arrived there around 7:40am. Upon arriving at Matemwe, he saw a youth sitting under the tree and he immediately identified the suspect based on the features he received from his informer. During cross examination **PW1** was asked if the informer was present at Matemwe Mbuyuni to identify and recognize the accused to him he replied ***“that at a crime scene the informer was not present but he managed to identify the accused based on the description given to***



***him by the informer that the suspect was tall, thin and had 'rasta' in his head.*** Based on the testimony of **PW1** which was well corroborated by his fellow officer **PW3** there are issues which this court need to address.

The First issue is whether the accused was arrested by officers from ZDCEA under the tree and the manner which the accused was found and arrested: as testified by **PW1** and corroborated by **PW3** that the accused was found under the tree at 7:40am, after they received a tip at 6:30am, so a journey from Migombani where the office of ZDCEA is located to Matemwe Mbuyuni took about 1hr and 10 minutes, what is not clear is that: the informer did not disclose the name of the suspect to **PW1**, what was the accused doing at 7:40am under the tree, is under the tree his residence, his place of business, waiting for customers to sell the alleged bhangis or he was just waiting so calm and relaxed to be arrested by **PW1** who drove 1hr and 10 minutes to find him under the tree with "**kipolo**" which contained dry leaves alleged to be bhangis?

I am alive to trite law that witness must be trusted unless, there is a reason to question their credibility as stated in the case of **Goodluck Kyando v. R [2006] TLR 363** and also in the case of **Edison Simon Mwombeki V. R, Criminal Appeal No. 94 of 2016** (unreported) where the Court stated that:

***"Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness"***

Regrettably the evidence of **PW1** is tainted with a lot of doubts and uncertainties which is difficult to believe and resolve. However, I will not take lightly the evidence of **PW3** who corroborated the evidence of **PW1** as witness during the search, arrest and seizure of the alleged drugs. It is settled law that it is not fatal for the arresting officer to arrest a person or go to a scene of crime without an independent witness. However, if a search is conducted without a presence of an independent witness it becomes fatal. No search can be conducted without the presence of an independent witness and has to testify in court on the search and seizure.

What remains to determine is whether the evidence of **PW3** who witnessed the search and seizure is that of an independent witness as required by **section**

**42 (2) of the Act no 8 of 2021** or of the interested person? In the case of **Timoth v. R [1984] TLR 86, HC Lugakingira J**, as he was then held that:

***“ In testimony of a witness where the issue is one of false evidence, the falsehood has to be considered in weighing the evidence as a whole, and where the falsehood is glaring and fundamental its effect is utterly to destroy confidence in the witness altogether, unless there is other independent evidence to corroborate the witness”***

Indeed the evidence of **PW1** is corroborated by his co officer **PW3** as independent witness but as held in the case of **DPP v. Mussa Hatibu Sembe, Criminal Appeal No. 130 of 2021** (unreported) that the evidence of co officers is of the interested person and not of independent person who has no interest in the outcome of the case, in that case **PW6** was a Police Officer who witnessed co Officer **PW4** arresting and searching a suspect of trafficking narcotic drugs and the Court of Appeal had this to say on the testimony of **PW6**:

***“We do not find anything to fault the trial judge who held that PW6 was an interested person hence for the interest of justice he could not be a free witness for the search and seizure. This omission leads to the conclusion that, since there was no independent witness it is doubtful whether the respondent was found trafficking in the narcotic drugs’***

Also in the case of **Shiraz Mohamed Shariff v. DPP [2005] TLR No. 401** it was held that:

***“ when accused is arrested at a crime scene it is required that there be an independent witness”***

So in the absence of civilian independent witness who has no any interest in the outcome of this case in hand, who testify on the search and seizure, the doubts and uncertainties remain unresolved, on whether indeed the accused was arrested under the tree at Matemwe Mbuyutende holding in his hand **‘kipolo’** which contain dry leave alleged to be bhang.

I have also went through the complete records of evidence submitted by Prosecution, in order to find the receipt for an article seized by **PW1**, as required by section **48 (g) of the Act No. 8 of 2021**, but the records of evidence are silent hence this court is of the view that there is doubt on the

seizure of the item. The essence of issuing a receipt is well elaborated in the case of **Shaabani Saidi Kindomba v. R, Criminal Appeal No. 390 of 2019** while citing the case of **Mbaruku Hamisi and 4 Others v. R, consolidated Criminal Appeals No. 141, 142, 143 & 145 of 2016** and the case of **Selemani Abdallah v. R, Criminal Appeal No. 354 of 2008** (unreported) at page 15 and 16, the Court of Appeal held that:

***" The purpose of issuing receipt under section 38(3) of the CPA Act [ CAP 20 R.E 2019] is to minimize complaint of fabrication and that the seized item come from the purported place or person"***

Second issue is that of Identification. The accused was identified to **PW1** by the informer on the phone which took less than 10 minutes to inform **PW1** the description of the accused and location to find the accused, of course **PW1** did not testified that he was given a google map by his informer or he google map the area of Matemwe Mbuyuni himself to get an accurate location of the accused whereabouts, so one will assume that it took some time for **PW1** to locate the accused and find a person fit a description given to **PW1** by the informer who did not disclose the name of the suspect to **PW1** or what the accused was wearing at material time, so here issue of identification need to be cleared by the court. In the Kenya case of **Kenga Chea Thoye v. R, Criminal Appeal No. 375 of 2006** (unreported) the Court of Appeal of Kenya held that:

***" Recognition is more satisfactory, more assuring and more reliable than identification of stranger"***

See also the case of **Athumani Hamis@ Athumani v. R, Criminal Appeal No. 288 of 2009 (un reported)** and **Rajabu v. Khalifa Katumbo & Three others v. R, [1994] TLR 129.**

This court is of the firm view that, since the informer was not physical present to recognize the accused person, this court will hold that the accused was stranger to **PW1** who was not directly recognized by the informer hence, there is a doubt on the identification of an accused person and whether the person arrested by **PW1** is the same person identified by the informer through the phone.

Now I will determine the evidence of **PW5**, who is the investigator in this case and see whether he has collected any evidence which consists of facts and circumstances surrounding this case. In order to understand the role of

investigator in criminal cases, I shall refer the case of **Simon v. R (1970) HCD 335**, where the Court described the terms **"investigation to include collection of evidence by police officer which primary consists of facts and circumstances of the case"**.

So a good and well trained investigator will go to the crime scene to conduct investigation for the purpose of **collecting evidence which consists of facts and circumstances of the case**. Now let see if the investigator of this case **PW5** has collected any evidence of facts and circumstances of the case at a crime scene.

In his testimony **PW5** stated that he went at the crime scene Matemwe Mbuyuni for investigation with officer Mussa Fadhil Mzee. The accused was not present during investigation as he was under the custody of ZDCEA. In cross examination he stated that he did not involved any person from accused side during investigation. He went at crime scene on 6/10/2022 and the incident took place on the 29/9/2022. He further stated that the crime scene is a residential place and there was a dispensary and in the middle is where the accused was arrested. The testimony of **PW5** has established that at a crime scene is a residential place and there is dispensary. **PW1** and **PW3** also testified that where the accused was arrested there was a house beside the tree. Throughout his testimony **PW5** did not state if he investigate about the house or the dispensary and examine people acquainted with the fact and circumstances of the accused or the crime. So this court is of the view that the investigation of this case did not collect any evidence which consists of facts and circumstances of the case as required by **section 47 (1) (a) (b) and (c) of Act No. 8 of 2021** which reads as follows:

Section 47 (1) '**In the exercising of power conferred under section 41 (1) of this Act, the Commissioner General or an authorized officer shall:**

- (a) Personally, go to the scene of crime to investigate and take stock of every article suspected to be used for commission of an offence,**
- (b) Take every measure necessary for discovery and impound every article which may potentially be used as evidence,**
- (c) Examine orally every person acquainted with the facts and circumstances of the crime committed**

In their testimonies **PW1** and **PW3** have stated that at a crime scene there was a house and their evidence corroborate by **PW5** himself than for a justice to be done at least **PW5** was required to establish that he at least tried to examine or interview person at the house or a dispensary they testified to exist at a crime scene, failure to do so create another doubt if at all the accused person was arrested at the place testified by **PW1**, **PW3** and **PW5**. The law is well settled in the situations where there is doubt as established in the case of **Abuhi Omary Abdallah & 3 Others v. R, Criminal Appeal No. 28 of 2010** where the Court where the Court held that:

***“ where there is any doubt, the settled law is to the effect that in such situation an accused person is entitled as a matter of right to the benefit of doubt or doubts”.***

At this stage, it is very obvious that the prosecution witnesses have not managed to clear all these doubts and uncertainties, it is very crystal clear that the prosecution has failed to prove without a reasonable doubt the place of arrest, search and seizure of the alleged drugs.

Lastly, I will evaluate the evidence of **DW1** if whether the defence raised any reasonable doubts against the prosecution case. in his defence the accused person **DW1** did not denied that he resides at Matemwe and he was arrested there, but denied to be found with kipolo alleged to contain narcotic drug bhangi he further raised the issue of contradictions statements between the prosecution witnesses on the manner he was arrested and the surroundings of the arresting place, **DW1** testified that he was taken from his home and not under the tree as testified by prosecution witnesses. I have refer the testimony of **PW1** and **PW2** to see if there is any contradictions in their statement on the manner and place of the arrest, they both testified that they saw the accused sitting under the tree holding “kipolo”. As I have stated before I still have doubt on where exactly the accused person was arrested, hence I shall refer to the case of **Simon Abonyo v. R, Criminal Appeal No. 144 of 2005** (unreported) that:

***“ It is not proper for a court to convict an accused person of the crime which it is not known when and where it took place.”***

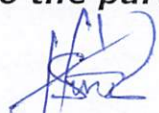
Having established that, I am of the view that, failure of prosecution to call an independent witness to testify on the search of the accused and on

seizure of the alleged drugs also failure to provide a receipt of seizure has created doubt and hence it is the view of this court that the prosecution has failed to prove the charge against the accused person beyond reasonable doubt, this court will not toil any further, what remains is for this court to acquit the accused person **Regionald Domician Gabriel** against the charge of being found in **unlawful possession of illicit drugs contrary to section 21 (1) (d) of the ZDCEA Act No. 8 of 2021**. The accused is hereby acquitted and ordered to be released immediately from the custody unless otherwise he is held there for other lawful reasons. I also Order for obvious reasons, for the immediate disposal of **exhibit P2** in accordance with the provision of section **56 of Act No. 8 of 2021**.

**It is so ordered.**

**Court:**

***Right of Appeal is explained to the parties.***

  
**S. HASSAN (J)**  
**JUDGE**

87/8/23

**Court:**

The Judgment is delivered today **27<sup>th</sup> February, 2023** in the presence of SSA Moh'd Abdalla for the Prosecution, and in the presence of the accused person **Regionald Domician Gabriel**.