

IN THE HIGH COURT OF ZANZIBAR

AT TUNGUU

CRIMINAL CASE No. 31 OF 2022

DIRECTOR OF PUBLIC PROSECUTIONS

VERSUS

HAMAD KHAMIS FAKI

RULING

24th July & 14th August, 2023

A. I. S. Suwedi, J

This ruling caused by the prayer made by the prosecution's side through Mr. Annuwar Saadun, learned Senior State Attorney who requested for further adjournment for lack of witnesses. On that material day the accused was under the legal service of the learned counsel Haji S. Tetere who objected the adjournment on the ground that it was a second postponement for failure to receive witnesses while the remaining witnesses are civilians. Counsel Tetere saw the adjournment unnecessary one and he prayed for this Court follow the decision of **The Director of Public Prosecutions v. Joseph s/o Mseti @ Super Dingi & 3 others,**

Criminal Appeal No. 549 of 2019 (unreported) since this Court has no power to close the case by prosecution which has already started.

Mr. Saadun replied that the adjournment cannot be said to be unnecessary just because the remaining witnesses are civilians. They are employees of the Government and they have other duties. Besides, it was only second prayer for adjournment and so it wasn't unnecessary adjournment. He then prayed for the prayer to be granted so as to make follow up of the witnesses.

The accused person is facing a charge of Possession of Narcotic Drugs Contrary to section 21(1) (d) of the Zanzibar Drugs Control and Enforcement Authority No. 8 of 2021, the Laws of Zanzibar, the offence which is non-bailable. This Court informed that on 8th day of May, 2022 at or about 11:30 am at Mwera Mtofaani, in the West 'A' District within the Urban West Region Unguja that the accused was found in unlawful possession of two plastic packets of narcotic drugs of heroin type being in the form of small stones weighed 9.2582g.

The prosecution started to present its case on 22/02/2022 where by two witnesses testified on that day and then continued on 05/06/2023 to make the total of 3 witnesses. The case afterwards adjourned for hearing

on 11/07/2023 where no witness brought and the reason given was that they did communicate with them but they did not appear. The adjournment granted to 24/07/2023 and on that date no witness appeared and the same reason was given. Hence, the prayer of dismissal of the charge was tabled.

I have taken into consideration the arguments before me and I honestly without going around the argument by the defence have merit. The prosecution acknowledged having 5 witnesses during the preliminary hearing and further they added 1 more to make 6 witnesses. 3 of them have testified and the Court is waiting for 3 others of which 2 of them are Officers from the Zanzibar Drugs Control and Enforcement Authority (the Authority) and 1 is Deputy of "Sheha". It sad to see officers form the Authority do not attend the Court to testify and the prosecution's side is nurturing that habit by saying they have other duties to do. I have asked myself is this Court exists for playing purposes so that a person can opt to do other things? Is it good to cause detention of a person and when call to testify, you say you have other duties to take care of without considering a person detained?

Under my considered opinion, it is not proper to do such thing as a Court is not a place to be despised. Everyone who is summoned to give evidence as a witness in court is required to appear unless that person is having a valid excuse not to appear at the designated time. A person should not simply fail to appear at the court hearing, he/she must contact the court. However, being busy or having courses, business meetings and any other reason of the like are not valid excuses for not showing up at a court hearing for which you have been summoned.

Back to the case at hand, I see that the prosecution did not provide a valid excuse for a Court to grant an adjournment, take into account this is not the first time, it is the second time and even before 05/06/2023, on 11/04/2023 summonses to PW2 who stopped to testify on 22/02/2023 due to point of law arose and 3 other witnesses have been issued but it was PW2 and PW3 appeared on 05/06/2023.

Owing to the fact that no good reason has been given by the prosecution, I am rejecting prayer made and henceforth I am taking a leaf stated by the Court of Appeal in the case of **Matimo Sagila and another v. Republic**, Criminal Appeal No. 07 of 2015 at page 13 that:

We would also like to point out that, if the trial magistrate felt that it was improper to adjourn the hearing of that case for whatever

reasons, he ought to **have dismissed the charge and discharged the accused....** [Emphasis Added]

Also see **The Director of Public Prosecutions v. Joseph s/o Mseti @ Super Dingi & 3 others** (supra).

Eventually, I am dismissing the charge and discharged the accused person, if not otherwise held lawful on another cause; the accused must be released instantly.

DATED at TUNGUU ZANZIBAR this 14th day of August, 2023



A. I. S. Suwedi

JUDGE

Delivered in the presence of Mr. Annuwar Saadun, learned Senior State Attorney for the DPP and in the presence of the accused person and his advocate, Haji S. Teterere, right of appeal explained,



A. I. S. Suwedi

JUDGE