



**IN THE HIGH COURT OF ZANZIBAR  
HELD AT TUNGUU**

**CRIMINAL CASE NO. 59 OF 2022**

**DPP**

**VERSUS**

**1. KHALFAN SALEH KHALFAN  
2. HALIMA ANTHONY GERARD**

**JUDGMENT**

18.07.2023 & 03.08.2023

**S.A.HASSAN, J.:**

Khalfan Saleh Khalfan and Halima Anthony Gerard were both arraigned and stand charged on two counts of being found in possession of narcotics drugs contrary to section 21(1)(d) of the Zanzibar drugs Control and Enforcement Authority Act, No 8/2021 laws of Zanzibar.

In the particulars of the offence, it is alleged that on 15.04.2022 at Mpendae Kwa Bint Hamran, Urban West Unguja, the accused were found in unlawful possession of Narcotics Drugs type heroin weighing 56.352g and cocaine weighing 15.9392g. Both accused pleaded not guilty to the information.

It is alleged that that on the 15.04.2022 at 23:30hrs both accused persons were arrested by the Zanzibar Drugs Control and enforcement Authority (ZDCEA) officers

Issa Yussuf Matias and Zuweni Mussa, inside their house situated at Mpendae kwa Binti Hamran, after the arrest their house was searched in the presence of *Sheha* and *Mjumbe wa Sheha of Binti Hamrani Shehia*, as a result Officer Issa Yussuf Mathais managed to find a transparent plastic pack which had powder in grain like form under the bed and six other packs hidden in a curtain rod tops, five of which were grain like form and one had powder like form. Together with the illicit drugs Officer Issa Matias also found a wallet which had in it Tanzania Shillings 698,000/ (six hundred and ninety eight thousands) as well as a weighing scale.

After the search, the accused persons were cautioned of their crime and together with the two independent witnesses they were made to fill in the search form before they were taken to Migombani where the ZDCEA office is, for further action. Upon reaching the office, the purported exhibits were confirmed and found out to be intact and a case was opened against them on possession of illicit drugs and the exhibits were put in a khaki envelop, sealed and marked ZDCEA/HQ/IR/54/2022 and was handed over to the exhibit keeper Aziza Amour Pandu at 23:49hrs of the same day.

On 21.04.2022 at the exhibits were sent to the Government Chemist for analysis and the result showed that the powder seized was heroin weighing 56.352g and cocaine weighing 15.9392g.

It was also alleged that on 29.04.2022 the first accused Khalfan Saleh Khalfan decided to confess on the crime of being found with illicit drugs and was sent to Hon. Hashim Kassim Abdi, PCM to make his confession.

During the hearing of the case both accused persons were represented by learned advocate Rajab Abdallah while Principal State Attorney Ali Bilal was for the DPP

In proving its case beyond reasonable doubt, the prosecution paraded eight witnesses namely Mr. Moh'd Hamdun Khamis (PW1), Mr. Issa Yussuf Matias (PW2), Ms. Zuweni Mussa Makame(PW3), Mr. Mbarouk Zahran Mbarouk (PW4) and Ms. Sharifa Moh'd Kuona (PW5), Mr. Yussuf Juma Mtumwa (PW6), Mr. Hashim Kassim Abdi, PCM (PW7)

and Ms. Aziza Amour Pandu (PW8) while Six (6) exhibits were tendered and admitted; Form ZDCEA 018 (Exhibit P1), the Government Chemist Laboratory Report Form ZDCEA 009 dated 05.05.2022 (Exhibit P2), A4 khaki envelope marked ZDCEA/HQ/IR/54/2022 inside which there are two curtain hanger caps/tops which one has two plastic packs and the second one has a pack within which there are five smaller packets of powder substance (Exhibit P3). Certificate of Seizure Form ZDCEA 011 (Exhibit P4), *Hati ya kuchukua vielelezo* (Exhibit P5) and Confession Statement (Exhibit P6).

PW1 Moh'd Hamdun Khamis, a Government chemist told this court the procedure used when the exhibit is sent for analysis that a sending officer from the Zanzibar Drugs Control and Enforcement Authority (ZDCEA) brings to the Government Chemist a request letter, form ZDCEA. 018 and the actual exhibit for analysis and upon completion of analysis the exhibit is sealed and a report on the findings is written before the exhibit and the related forms are handover to the officer who had initially sent them, he confirmed to have received a khaki envelop which was sealed and marked ZDCEA/HQ/IR/54/2022 for laboratory analysis if the contents are illicit drugs. PW1 produced Form ZDCEA 018 (exhibit P1) and Certificate of Analysis Form ZDCEA 009 (exhibit P2) as part of his evidence. He also told the court that upon doing the tests on the exhibit brought, he found out that the contents to be 56.352g of Heroin and 15.9392g of Cocaine and handed a khaki envelop after identification and the same was admitted and marked Exhibit P3.

Issa Yussuf Matias (PW2) told the Court that on 15.04.2022 at around 20:50hrs while he was on patrol with a fellow officer Zuweni Mussa Makame (PW3) received a tip from an informer that there is a house at Kwa BintiHamrani that a husband and wife are dealing with drugs, and because they were not far from the said house the informer went to show them the house and at 23:00hrs they managed to enter and arrested the people who dwell within and they started to look for independent witnesses who came to the house at 23:20hrs and the search was conducted afterwards and as the result under the bed there was a plastic bag which was transparent and inside there was powder in form of grains, and in the caps of curtain hanger a plastic pack with white

powder was retrieved as well as a plastic bag with five packs of grain like substance. PW2 told the court that he did the search in the presence of Zuwena (PW3), Sharifa Moh'd Kuoka (PW5) Yussuf Juma (PW6). He also told the court that as the result of the same search he managed to find a wallet in which there was Tsh 698,000/- and related that money with selling drugs like he was told by the informer. When search was completed PW2 cautioned the suspects and made them sign *FOMU YA UCHUKUAJI VIELELEZO* as well as the independent witnesses (PW5 and PW6) before he left with the suspects and the exhibit which was under his care and they reached the office at 23:40hrs, verified the exhibit in the presence of the suspects and PW3 before a case ZDCEA/HQ/IR/54/2023 was opened, exhibits put in a khaki envelop and marked with the case number opened and sealed before handed to the exhibit keeper Aziza Amour Pandu (PW8) at 23:59hrs for safe custody. As part of his evidence PW3 submitted Certificate of Seizure Form ZDCEA 011 (exhibit P4) and Form ya Kuchukulia Vielelezo ZDCEA 024 (exhibit P5).

Zuwena Mussa Makame (PW3) an officer from ZDECEA told the court that she was with PW2 when they received information about couple who deal with drugs and they decided to go to their house because it was not far far, once they reached there they did place people under arrest before calling the Sheha and another person to witness the search. Sheha and the other person came at 23:30hrs and the search was conducted after that were PW2 managed to retrieve under the bed a pack which had grain like powder suspected to be illicit drugs and another pack inside the hanger rod/caps which also had packs of powder believed to be illicit drugs, a wallet which had Tsh 698,000/- and a scale. PW3 saw PW2 giving certificate of seizure to PW5 and PW6 to sign before the accused persons were taken to ZDCEA's Headquarters at Kilimani.

Mbarouk Zahran Mbarouk (PW4) an investigating officer from ZDCEA told the court that he was handed a case file ZDCEA/HQ/IR/54/2022 on 19.04.2022 and on the same day he was handed an exhibit in a sealed khaki envelop with the same identification number written on it, plus other documentation so that he sends the exhibit to the chief Government Chemist for analysis where he was received by PW1 who opened the

envelope and inside that envelop there were two curtain hanger caps, where one cap had two packs of which one had white powder while the other had grain like powder substance, and the second cap had a plastic pack which inside there were five plastic packs with grain like substance, he left the exhibits after handling them for analysis and went to collect them on 05.05.2022 where he was handed the sealed exhibit, the report of analysis and other documentation, the report confirmed that the exhibit sent was cocaine and heroin. PW4 handed the exhibit to PW8 for safe keeping until when it was needed to be brought to the court.

PW4 also told the court that he did question the suspects where the second accused, Halima told him that she does not know anything and the first accused confessed that the exhibit is his, and from that on 29.04.2022 the first accused was sent to Primary Court's Magistrate to confess his crime.

Sharifa Mohd Kuoka (PW5) told the court that she is "mjumbe wa sheha" and that on 15.04.2022 at around 23:20hrs she got a call from *sheha* to go and witness a search in one of the houses within her shehia. PW5 said that when they were entering the said house the second accused was sitting on a chair while the first accused was made to sit on the floor. A female officer searched the second accused and she was found with nothing, but on the floor there was something like calculator. PW5 also told the court the room searched had two windows and curtains, and the curtain rods had caps and when caps were opened there was powder like substance and something which looks like "*ubani*", and the other side of the curtain rod's cap there was something like *ubani* . after the search PW5 and PW6 filled the a form on what was found and the two accuseds were taken.

Yussuf Juma Mtumwa (PW6) who is sheha of Jan'gombe told the court that on 15.04.2022 at around 23:15hrs he received a phone call from ZDCEA officers that there is a house in Jang'ombe that they need to search, and he and PW5 went to witness the seach, and as the result of that search six packs of stone like substance and a pack of powder like substance was found in a room said to belong to the first accused.

Hashim Kassim Abdi (PW7), a Primary Court Magistrate sitting at Mwera Primary Court told the court that on 29.04.2022 at 13:00hrs four people went in his office and introduced themselves that they are coming from ZDCEA, and that three of them are officers and the fourth one was a person who wants to make confession. He told the three officers to let him be with that man alone and took him in his office where only two of them remained and started explaining to ask him the procedural questions to determine if he was not forced to make confession. PW7 also inspected that man's body to see if he was not beaten and forced to make confession and he told him that he was not forced by anyone and that he is making the confession on his own willing. He then told him the consequence of his confession and possible sentence of the offence in hand and he affirmed that he was ready to make the confession.

Upon being satisfied that that person was ready he started recording whereby the person stated his name being Khalfan Saleh Khalfan, living at Mpendae and that he is the owner of the drugs which were found in his house and no one else knows about those drugs. PW7 then read over the statement recorded and asked the second accused if he wants to change his mind and he said he does not want to change his mind, and upon being satisfied that he wants to proceed with the statement and he understood it then he made him sign it. PW7 also signed the statement and stamped it. The same was produced to the court and admitted as exhibit P6.

Aziza Amour Pandu (PW8) is exhibit keeper working at ZDCEA told the court that on 15.04.2022 at 23:59hrs he had received exhibit which was in a big khaki envelop, sealed and marked ZDCEA/HQ/IR/54/2022 and a weighing scale which is black in color and shiny on the side and a wallet which had Tsh 698,000/- and kept these exhibits in safe custody which she is the only person who has access to. And that on 19.04.2022 at 11:40hrs officer Mbarouk Zahran collected the exhibit so that he sends it to the Government Chemist for analysis.

PW8 went on stating that on 05.05.2022 at 12:20hrs while she was at the office, PW4 returned the report, a form ZDCEA 018 and the big khaki envelop which was sealed by

the Government Chemist but has the same mark ZDCEA/HQ/IR/54/2022 and kept the exhibit in safe place until it was needed to be sent to the court.

It is worth noting that on establishing whether the accused persons had prima facie case, this case found the second accused not guilty as per S.263(1) of the Criminal Procedure hence set free while the first accused was found to have a case to answer and chose to defend himself on oath and it was stated that he will call in witnesses who will be not more than four however at the defense he was the sole defense witness DW1.

At defense, DW1 denied the charges and that on a particular day and time he was at his house in Jang'ombe and while in the bathroom he heard that he was called and he heard man's voice so he went out of the bathroom and saw many people inside his house and one of them told him that he is an officer from ZDCEA and asked for his wife and he told him that she was in the bedroom, he then went in the room and wake DW1's wife and kept her under arrest while other man were going everywhere in the house. They said they were going to call sheha who came after half an hour, and the sheha who came was not from the same shehia but he came with Diwani and they retrieved a wallet which had money, and he and his wife were taken to Mnara wa Mbao and upon reaching there PW2 told DW1 to give him a number of anyone from his house and he does not know what they spoke. In the morning DW1's son came and told him that he was told to bring the curtain rod and he did as directed.

DW1 also told the court that he was taken to a place that he did not know as he was blindfolded and he was told to confess so that his wife can be set free that is why he confessed. Although the confession was on free will, but he did so because he was scared as the men had guns and they were outside the Magistrate's office.

After hearing submissions from prosecution witnesses and that of the accused who was the sole witness this court is left to determine whether the prosecution has discharged its obligation to the information on required standard and whether the defense raised any reasonable doubt against the prosecution case.

Testimony of PW1 and the exhibits provided by him have shown this court that exhibit P3 is indeed narcotics drugs of heroin and cocaine as prescribed in the exhibit P2. On establishing that exhibit P3 was retrieved as a result of search conducted in the room belong to DW1, testimonies of PW2, PW3, PW5 and PW6 told the court on how the search was conducted and how and where exhibit P3 was obtained and later on seized. Whereas on the ownership of exhibit P3 had been confessed by DW1 before PW7 and a statement was produced out of that confession (exhibit P6) of which the DW1 made efforts in explaining as to why he made the confession and that he did not make such on his free will.

At this juncture, I will like to relate myself on what Evidence Act provides on confession. That Section 26 of the Evidence Act No 6/2016 (EA) provides that:

*A confession which is freely and voluntarily made by a person accused on an offence in the immediate presence of the Magistrate may be proved as against that person.*

Section 27 of EA goes on providing that:

*No confession made by any person while he is in custody of a police officer, unless it is made in immediate presence of a Magistrate, shall be proved as against such person.*

DW1 in his defense he retracted his confession to the point that prosecutor called for a TWT however later on it was realized that had the accused wanted to retract his confession he was to do so before exhibit P6 was admitted, not during cross examination or during defense. See the case of **Shihoze Semi and Another V Republic (1992) TLR 330**.

I must be warning myself is relying much on the confession statement, taking into account that confession statement will be presumed to have been voluntarily made until objection is made by the defense on the ground, either that it was not voluntarily made at all as decided in the case of **Selemani Hassani v R, Criminal Appeal No 364 of 2008 (unreported)**, however, the defendant introduced the his involuntariness during the defense and not before the same was admitted, and that the court see that defense



as a mere afterthought and no material objection was furnished before this court not to rely on it and to discredit the evidence adduced by PW7 on the fact the confession statement recorded by him was statement of the accused person that was voluntary made.

In his defense the accused also told the court that officers from ZDCEA went into his house before the two independent witnesses did, and stated that nothing was taken from his house after the search other than a wallet which had money in it, however, when exhibits P4 and P5 tendered he did not object them being admitted and the same showed what was seized as the result of the search and that he had signed the receipt of that search, again this court is of the view that the statement that nothing was taken other than a wallet is a mere defense afterthought.

Stating that, I find the prosecution have proved a charge against the first accused, hence this court finds Khalfan Saleh Khalfan guilty of both counts of being found in possession of narcotics drugs contrary to section 21(1)(d) of the Zanzibar drugs Control and Enforcement Authority Act, No 8/2021 laws of Zanzibar hence is hereby convicted



.....  
**S.A.HASSAN**

**JUDGE**

**03.08.2023**

Court:

The prosecutor is invited to address the court regarding the accused's previous records and matters related thereto.

SA Dawa Suleiman:

There is no previous conviction, however, I pray that he is given sentence which will give him and others a lesson as there is rampant occurrence on drug possession in the streets which tarnish the image of our country.

Court:

Defense is invited to address the court on mitigations and other prayers related to.

Advocate Abdallah Abdulrahim:

I pray that this court realizes that my client has a family that depend on him, he has four children, the youngest is three years old, upbringing of those children depend on his presence, for the welfare of those kids I pray that this court be lenient and because my client has no previous conviction I pray that the court give him warning and not incarceration as all of his children are of school age, the last one is in kindergarten and the first one is in form four, hence his family depend on him.

## **SENTENCE**

After hearing both sides, and the fact that the accused has no previous records, this court sympathizes with the accused especially his four children which we just learned that he has, and I do understand that children of that young age needs a father figure for their upbringing, unfortunately their father did not see the danger he was exposing his children and other peoples' children on the drugs he was possessing, with that I do not believe a mere warning will be enough lesson to him and others in making Zanzibar drugs free, therefore I sentence him seven years (7) imprisonment at Chuo cha Mafunzo on the first count and seven years (7) imprisonment at Chuo cha Mafunzo on the second count. The sentence to run concurrently.



.....  
**S.A.HASSAN**

**JUDGE**

**03.08.2023**

Order

Exhibit P3 which is narcotics drugs to be disposed according to the disposal procedures set by the laws and regulation of Zanzibar.



.....  
**S.A.HASSAN**

**JUDGE**

**03.08.2023**

Court:

This Judgment has been delivered in open court in the presence of SA Dawa Suleiman for the DPP and Advocate Abdallah Abdulrahim for the accused. Right of appeal against Conviction and Sentence has been explained.



.....  
**S.A.HASSAN**

**JUDGE**

**03.08.2023**