

IN THE HIGH COURT OF ZANZIBAR

HELD AT TUNGUU

CRIMINAL CASE NO. 5 OF 2023

DIRECTOR OF PUBLIC PROSECUTION

V/S

RASHID RAMADHAN HAJI

JUDGMENT

Dated: 5th October, 2023

S. HASSAN (J)

The accused person **RASHID RAMADHAN HAJI**, was arraigned on the 23/1/2023 for the charge of being found with unlawful possession of the drugs contrary to **section 21 (1) (d)** of the Zanzibar Drugs Control and Enforcement Authority Act No. 8 of 2021. The accused person pleaded not guilty to the charge upon arraignment.

The particulars of the offence alleged that, the accused person on the 25th November, 2022 at around 13:00hrs at Kilombero at the Northern District B of Northern Region on the motorbike with registration **Z 648 LZ** color black, unlawfully was found with possession of **85 pellets** of drugs of the heroine type weigh **1.8105grams** and other **14 pellets** of drugs of heroine type in the stone form weigh **1.981grams** contrary to the law.

On the 20th February, 2023 the Prosecution submitted the completed records of evidence and the accused was given 25 days for his defence preparation as prayed.

During the hearing of this case, the prosecution paraded **7 witnesses** and **tendered 4 exhibits** in their bid to prove the case. On the other side, the accused was the only sole witness called for defence.

In this case the Prosecution was represented by SA Mohamed Abdalla at the early stages and later on by SSA Soud Said and Shamsi Saad, while the accused person was unrepresented.

Issa Yussuf Matias (PW1), was the first witnessed called prosecution to give his evidence and he stated that, he work at ZDCEA as patrol and investigation officer. He went on to testify that, on the 25/11/2023 at around 12:40pm they were in their routine patrol at Mchangani Central District with his fellow officer Khamis Makame when the received tip from their informer that there is a youth on black and red motorbike with registration **Z 648 LZ** coming from Kidimni going to Kinyasini through the Mchangani road and that the said youth is carrying trafficking drugs for the purpose of supply in Kinyasini. **PW1** and his fellow officer prepared themselves at Mchangani and at around 12:50pm of the same afternoon managed to see the motorbike prescribed to them by the informer.

PW1 further stated that, they tried to stop the motorbike but it did not stop and it accelerated past them. They started to chase after the motorbike with their car and at Kilombero the motorbike lost direction and crushed over the Banana trees near the road. Immediately he went and arrest the accused while witnessed by his fellow officer Khamis Makame. They identified themselves as officers from ZDCEA and asked the suspect to identify himself as well and he identified himself by the name of Rashid Ramadhan. He further testified that, when they were at the crime scene two civilian approached to witness the incident and **PW1** introduced himself to them as officer from ZDCEA and ask the civilian to witness the search. The civilians also identified themselves by the names of *Mwanahamisi Ali* who happened to be the Sheha of that area and the other civilian introduced himself by the name of *Yahya Dude*. **PW1** ask the suspect to search him and the bag which was wrapped at the steering of the motorbike on the top of the front lamp. **PW1** opened the bag and discovered the paper bad inside which had **85 pellets** foiled in each pellet and inside each pellet there was a substance suspected of being heroine, **PW1** also discovered another piece of paper wrapped which also had suspected drugs in stone form of **14 pellets** in each there was a transparent paper containing the suspected drugs. He went on to state that the search and the discovery of the alleged drugs was witnessed by his fellow officer Khamis Makeme and two civilian witnesses Mwanahamisi Ali and Yahya Dude and the suspect himself. **PW1** cautioned the suspect for unlawfully possession of drugs alleged to be heroine.

PW1 further stated that, after the discovery he asked his fellow officer, the suspect and to sign the seizure certificate which was witnessed by the two civilian witnesses. After that they left the scene of crime and went back to their office at Migombani while the

suspect and the exhibit were under his custody. Upon arriving at their office at around 2:30pm **PW1** re inspected the exhibit and got the same number of pellets as they were on the discovery. He further opened the case file against the suspect and gave it identification number **ZDCEA/HQ/IR/223/2022** for unlawful possession of drugs. At around 2:40pm **PW1** sealed the blue bag which had the alleged drugs with red lakiri (seal) and wrote the identification number **ZDCEA/HQ/IR/223/2022** the same identification number was also placed at motorbike with registration **Z 648 LZ**, **PW1** stated that he performed all that while witnessed by his follow officer **Khamis Makame** and the suspect. At around 2:50pm of the same date, **PW1** handed over the exhibits to the exhibit keeper at their office for same custody.

PW1 went on to tender in court after identification on the marks the following: **seizure certificate form 024 which was admitted in court and marked as Exhibit P1, blue bag was admitted in court as exhibit P2 and motorbike was admitted as exhibit P3**

In cross examination **PW1** stated that he arrested the accused on the 25/11/2022 at Kilombero near the house of Sheha Mwanahamisi Ali. He went on to testify that, **exhibit P1** has the names of the accused, Mwanahamisi Ali and Yahya Dude as witnesses. He further stated that after the arrest they identified themselves and asked the accused to identified himself. He went on to testify that, they managed to identify the accused based on the description given to them by the informer but also they identify the motorbike which the accused was riding and the direction which he was heading.

Khamis Makame Salum (PW2) an officer working at **ZDCEA** who was also named by **PW1** as fellow officer who was with during the patrol arrest and the discovery of **exhibit P2**, gave his testimony and narrated was testified by **PW1**, hence he corroborated what was stated by **PW1** and I don't see the need to make repetition of what has already been testified by **PW1**

In cross examination **PW2** stated that they received a tip while in patrol at Mchangani and witnessed **PW1** trying to stop the accused but the accused did not stop hence they had to chase him and managed to arrest the accused at Kilombero when the motorbike lost controll. He went on to state that on the day of arrest the accused was wearing a trouser and a black jacket. He also testified that at the scene of crime there was civilian witnesses by the name of Mwanahamisi Ali who is a Sheha and Yahya Dude. He also witnessed the accused signing the seizure certificate. He went on to state that the accused was given his basic legal right.

Saada Mohamed Fum (PW3) an exhibit keeper at ZDCEA also gave her evidence and stated that on the 25/11/2022 at around 14:50pm while she was in her office, she received from **PW1 exhibit P2** sealed with lakiri with identification number ZDCEA/HQ/IR/223/2022 and she kept the exhibit in the special cabin and the key of that special cabin stays only with her as exhibit keeper. She also received for custody motorbike with registration number Z 648 LZ also had identification number ZDCEA/HQ/IR/223/2022 and she kept the Honda in a store. On 29/11/2022 at around 13:00pm while in her office she gave officer Mbarouk Zahran the **exhibit P2**, form 018 and analysis request letter for the purpose of taking them to the Lab for analysis test. She went on to state that on the 19/12/2022 at around 13:30pm officer Mbarouk Zahran returned to her the exhibit P2 which was sealed with government chemist lakiri with identification number ZDCEA/HQ/IR/223/2022 and kept under custody until it was needed in court as evidence.

In cross examination **PW3** stated that when the exhibit was given to her for custody the accused was present and she knew the person found with the exhibit. She went on to state that she did not have any documentation in court regarding the exhibit which shows that she received the exhibit from officer Zahran after it returned to her from the Government Lab for chemical analysis.

Mbarouk Zahran Mbarouk (PW4) also was called to give evidence and testified that he is working at ZDCEA as arresting and investigation officer for drugs cases. He further stated that on the 29/11/2022 at around 13:00pm he received the exhibit and took it to the government lab for chemical analysis, at the lab he met with analyst Hajra Mohamed Haji and handed over to her the exhibit, form 018 and a letter. The analyst unsealed the bag and it was there where he saw another paper bag which had **85 pellets** of aluminium foiled drugs and another piece of paper containing drugs in stones form of **14 pellets** wrapped in the transparent plastic.

PW4 further stated that after he left the government lab he continued with his investigation by interviewing the witness, the accused and also he went to the scene of crime at Kilombero. On the 19/12/2022 at around 13:00pm **PW4** went back to the lab to collect the exhibit and met again with analyst Hajra who gave him the exhibit sealed with red lakiri of the government lab, form 018 and analysis report.

In cross examination **PW4** testified that, the exhibit which he was given was the one found with the accused. He further stated that during his crime scene visit he did not take the accused for security reasons.

Mwanahamisi Ali (PW5) gave her evidence and stated that, she is a Sheha of Kilombero and that on the 25/11/2022 she was at her house washing her clothers and

suddenly she had a notice of accident outside her house and she went out running. While outside she met with officers from ZDCEA and a youth laying down with a crushed motorbike with registration number Z 648 LZ. She informed the officers that she is a Sheha. **PW5** went on to state that, she witnessed the officer from ZDCEA asking to search the youth and found a blue bag containing 85 pellets stones form of drugs. She further stated that, there was another bag with 14 pellets stones form of drugs. **PW5** further stated that the accused was asked to sign and then he was put in the car and the officers also took the motorbike and put it in another car. After that **PW5** stated that she went back to her house to continue with her works. She further testified that there were many people surrounding the crime scene but only herself and Yahya Dude witnessed the search.

In cross examination **PW5** stated that she is a Sheha but she did not have any document to prove that she is indeed the Sheha. She further stated that, she witnessed the incident on the 25/11/2022 and she witnessed the accused signing on paper which will presented in court. **PW5** further testified that she did not sign in any paper.

Hajra Mohamed Haji (PW6) an analyst from the Chief Government Chemist Laboratory (CGCL) gave her evidence and testified that she performed the test on the exhibit and prepared the analysis report on the exhibit.

In cross examination **PW6** testified on the procedure and stages she undertook in analyzing the **exhibit P2**, she stated that she first do color test and confirmatory test which shows the contents of the exhibit. She further stated that, the test showed that the exhibit is heroine. She further stated that, she weighed the exhibit before the test and that the drugs were in color khaki (brown). Furthermore she stated that she did not know the accused or the suspect when the exhibit was brought for test. **PW6** further testified that she received the exhibit from ZDCEA officer Mbarouk Zahran Mbarouk. On weigh of the exhibit she stated that the **85 pellets weigh 1.8105grams** while the **14 pellets weigh 1.1981grams**.

Yahya Dude Makungu (PW7) also gave his evidence and stated that he lived in Mchangani Shamba and on the 25/11/22 at around 13:00pm he was at Kilombero sitting in his car waiting for someone when he saw the motorbike passing in a high speed and thereafter crushed down. The motorbike was chased by another car behind. He witnessed the car stopped and people got out of the car and arrested the motorist. He further stated that one women by the name of Mwanahamisi Ali who introduced herself as Sheha came out from the house near the motorbike crush. Furthermore, he stated that the people from the car introduced themselves as officers from ZDCEA and they asked the suspect to identify himself and gave the name of Rashid Ramadhan. He

further testified that, the officers from ZDCEA ask to search the suspect and during the search they discover a plastic bag with **85 pellets** suspected to be drugs wrapped in foil. He further stated that, the officers also discovered **14 pellets** stones of drugs. He further stated that the registration of the motorbike was **Z 648 LZ**. He went on to state that after the search the officers from ZDCEA left with the suspect and also took the motorbike.

In cross examination **PW7** repeated his evidence that he was in his car waiting for someone at Kilombero where the incident took place. He further stated that where he was and the incident area is not that far. He further stated that he did not see the color of the suspected drugs. He went on to testify that he was not called at the sence of crime he approached there because he was nearby. He further stated that, he only witnessed the arrest and search and he is not an officer of ZDCEA, and he is only the civilian witnessed who saw the accused arrested with drugs.

After the evidence of **PW7**, the prosecution closed their case and the matter was left in the hand of the court to determine whether the evidence produced so far by prosecution warrant the accused to enter his defence. The court was satisfied that the evidence from the prosecution was sufficient for the accused to enter his defence.

The accused person was made aware of his legal rights under **section 216 (1) (a) (b) of the Criminal Procedure Act No 7/2018** and opted to give his defence without taking an oath and that he will be the sole witness from the defence side.

On the 17/8/2023, **Rashid Ramadhan Haji (DW1)** gave his evidence and stated that he lives at Kidimni and that on the 25/11/2022 at around 10:00am he was at "Boda Boda" stop and received a call and went to pick a passenger at Kinyasini. He stated that he saw 2 cars behind one of which is Prado which knocked him down and he was injured and his motorbike damaged. He further stated that, the people who knock him down were suspecting him of trafficking drugs. He denied having any drugs or any thing else during the search. He further stated that, he was handcuffed and beaten. He stated that he was taken at ZDCEA office at Mnara wa Mbao and kept there for 2 weeks and thereafter he was taken to Kidimni and stayed there for another 2 weeks and then brought to court. **DW1** denied the charge against him.

In cross examination **DW1** denied of being found with drugs when arrested, and stated all prosecution witnesses have testified to the discovery of the drugs on the top of his motorbike and he further stated that during his defence testimony he did not state that he was given drugs by officers from ZDCEA, he further stated that he did not know any of the officers who arrested him and he had no issues with any of them personally. He went on to state that, it is a habit of officers of ZDCEA to frame people of having drugs.

After the cross examination of **DW1**, the accused (defence side) closed its case and the matter was left in the hand of the court to decide whether based on the evidence presented, the prosecution has managed to prove the charge against the accused person beyond the standard required which is beyond reasonable doubt or otherwise.

As always, in criminal matters the burden and duty of proving the charge against the accused person beyond all reasonable doubt is in the hands and shoulders of the prosecution as stated in the case of **Christian s/o Kaale and Rwekeza s/o Bernald v. R,[1992] TLR 302**, where 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"

Bearing the duty of prosecution in mind, I shall first start by determine the evidence of **PW6**, a Government Analyst an expert who discharged her duty to testify on how she conducted analysis to the samples of the substance and came to the conclusion that the alleged substance is narcotic drugs known as 'heroin' based on **exhibit P4** Analysis report.

In this case, the defence side produced no evidence which shade a doubt or rebutted on the findings of **PW6**. In that regard, I shall me reference to **Section 64 (2) of the Zanzibar Drugs Control and Enforcement Authority Act, No. 8 of 2021**, which provides the following:

"Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by the Government Analyst shall be admissible as evidence of the fact stated therein without formal proof and such evidence shall, unless rebutted, be conclusive"

From the findings above, I hold that the findings made by **PW6** supported by **exhibit P4** are conclusive evidence that alleged drugs contained in the **exhibit P2** were narcotic drugs namely heroin **weighed 1.8105grams and 1.1981grams** respectively

Moreover, the role and duty of the expert to furnish the court with necessary scientific criteria for testing was observed by the Court of Appeal in the case of **Sylvester Stephano v. R, Criminal Appeal No. 527 of 2016** at Arusha (unreported) where it was held as follows:

“ that the duty of an expert is to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the court to form its own independent judgment by application of these criteria to the facts proven in evidence”

Furthermore, in the case of **Charo Said Kimilu v. R, Criminal Appeal No. 1 of 2015** (unreported) where the Court held:

“Narcotic drugs or psychotropic substances should be submitted to the Government Chemist Laboratory Agency for weighing and analysis before tendering it as evidence in court”

Having determined that the **exhibit P2** is conclusive evidence and it was weighed and analyzed as required by law, now it is time to make findings on the following issues:

1. Whether the prosecution has proved this case beyond reasonable doubt;
2. Whether the accused has raised any doubt on the chain of custody and whether the chain of custody is established

Starting with the **first issue**, for a charge of unlawful possession of narcotic drugs to succeed, the prosecution has to prove the following elements *(i) that the accused was unlawful in physical possession or in control of the drugs (this is a physical element,) (ii) they must also prove that the accused had a knowledge of the possession of the item, (this is the mental element).*

In the case of **Peter Mwangai Kariuki v. R [2015] e KLR, Mativo J**, stated the following:

“ In my view, possession includes two elements: namely being in physical control of the item and knowledge of having the item, to be guilty of possession, an accused person must be shown to have knowledge of two things, namely, that the accused knew the item was in his custody and

secondly he knew that the item in question was prohibited. A person has possession of something if the person knows of its presence and has physical control of it, or has the power and intention to control it”.

Also in the case of **Moses Charles Deo v. R [1987]** it was held that:

“for a person to be found to have had possession, actual or constructive, of goods it must be proved either that he was aware of their presence and that he exercised control over them”

In the present case in hand, the prosecution is relying on the evidence of **PW1, PW2** arresting officers from ZDCEA and their story is that on 25/11/2022 at around 12:30pm, they received a tip from their informer while in patrol that there is a youth on a motorbike with registration Z 648 LZ suspecting of carrying drugs. After the youth failed to stop they chase after him and eventually he crashed, they arrested him and the search was conducted and the discovery of drugs was witnessed by civilian independent witnesses **PW5** and **PW7**.

This court is of the view that, the evidence of **PW5** and that of **PW7** as independent witnesses is solid, straight forward and not shaken, **PW5** testified that she was washing her clothes when she heard a crush outside her house and decided to go out and found **PW1** and **PW2** and the youth with motorbike, while **PW7** testified that, he was at the area where the accident happen waiting for someone in his car and witnesses the motorbike passed in high speed chased behind by another car, and when the motorbike crashed he went to see what was happening.

Both witnesses **PW5** and **PW7** evidence ought to be given credence as held in the case of **Cosperry Ntagalindo @ Koro v. R, Criminal Appeal No. 312 of 2015** (unreported) where the Court of Appeal held that:

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

Moreover, good reason for not believing a witness include the fact that the witness has given improper or implausible evidence, or the evidence has been materially contradicted by another witness or witnesses, see the case of **Goodluck Kyando v. R, [2006] tlr 363** and **Mathias Bundale v. R, Criminal Appeal No. 62 of 2004** (unreported).

Bearing that principle in mind, I have carefully analyzed the evidence given by **PW5** and **PW7** and found it to be credible and deserved in my view to be believed. I have

purposely in this case not considered the evidence of **PW2** for the reasons that as fellow officer of **PW1** even though his evidence corroborated the evidence of **PW1**, but **PW2** in my view is an interested party in this case and has interest in the outcome of this case. This is not the same for **PW5** and **PW7** who are civilian and both were doing their own business when the incident took place and went to witness voluntarily.

Hence, this court has no valid reasons to question the credibility of the prosecution witnesses because the evidence given is neither improper nor contradictory.

I will now make finding and determine the **second issue**, in his defence the accused person (**DW1**) denied the charge against him, and testified that he was going to pick a passenger when all over sudden found himself chased by the car behind him, but during his testimony he did not deny that he was the one riding motorbike **Z 648 LZ (exhibit P3)** and also he did not deny not to have seen **PW5** and **PW7** during his search and the discovery of drugs and ultimate his arrest.

Moreover, in several occasions in this case, the accused person has raised the issue of seizure certificate and questioned the legality of **exhibit P1** as it was not sign by himself nor **PW5** and **PW7** as independent civilian witness, hence it was his submission that the chain of custody is broken.

In determine the **second issue**, I remain aware to the fact that, in criminal cases where the subject matter of the trial is seized and placed in the custody of the law enforcement agencies in this case ZDCEA, the handling of the seized item must be foolproof, and that the chain of custody must be unbroken.

The issue of handling of a seized object was emphasized by the Court of Appeal in the case of **Moses Muhagama Laurance v. The Government of Zanzibar, Criminal Appeal No. 17 of 2002** (unreported), the Court of Appeal held the following:

“ There is need therefore to follow carefully the handling of what was seized from the appellant up to the time of analysis by the Government Chemist of what was believed to have been found on the appellant”

Moreover, in the case of **Chacha Jeremiah Murimi and 3 Others v. R, Criminal Appeal No. 551 of 2015**, the Court of Appeal reasoned as follows:

“ In order to have a solid chain of custody it is important to follow carefully the handling of what is seized from the suspect up to the time of laboratory analysis. Until finally the exhibit seized is received in court as evidence... The movement of exhibit from one person to another should be handled with

great care to eliminate any possibility that may have been to tempering of that exhibit"

I have carefully reviewed the testimony adduced by the prosecution witnesses, and I have come to the conclusion that the handling of **exhibit P2** was consistent with the requirement of the law, hence the chain of custody was well established.

In determine another doubt raised by the accused person (**DW1**) on the seizure certificate **exhibit P1** not signed by him and **PW5** and **PW7**, and that the oral evidence of prosecution witnesses is not enough to prove the charge against him.

I remain alive to the settle law that; **credible oral evidence is just as good, to establish chain of custody**, see the case of **Nassoro Said Kimilu & Another v. R, Criminal Appeal No. 111 of 2015** (unreported) See also the case of **Vuyo Jack v. DPP, Criminal Appeal No. 334 of 2016** (unreported), in which reference was made to the decision in **Commonwealth v. Webster 1850 vol 50 MAS 255** where it was held:

" The advantage of positive evidence is that it is direct testimony of witness of a fact to be proved who if speaks the truth so it done"

Furthermore, I am also alive to **section 48 (g) of the Act No. 8 of 2021** which provides that in exercising of powers conferred under **section 41(1)** of the Act, the Commissioner General or an authorized officer shall record and issue a receipt for an article or thing seized.

The issue of seizure certificate has also been a subject of several Court of Appeal decisions for instance in the case of **Mychel Andriano Takahindengeng v. R, Criminal Appeal No 76 of 2020** (unreported) at page 7 on the seizure certificate as the way to prove chain of custody the Court stated the following:

" We begin by appreciating the settle position of the law that, depending on the circumstance of each case, documentation is hitherto not the only way of proving seizure of a suspected item and its chain of custody"

See also the case of **Marceline Koivogui v. R, Criminal Appeal No. 469 of 2017**, the case of **Kadiria Said Kimaro v. R, Criminal Appeal No. 301 of 2017** (unreported) and the case of **Maluqus Chiboni @ Silvester Chiboni and John Simon v. R, Criminal Appeal No. 8 of 2011** (unreported)

It is the view of this court that, the absence of signature in the seizure certificate as claimed by the accused person to cast doubt on the chain of custody has no relevance

due to the fact that oral direct evidence from Prosecution witnesses particularly **PW5** and **PW7** proved that the drugs were discovered from the accused motorbike and their evidence was not broken or shaken by the accused during cross examination.

In my conclusion, this court is satisfied that the drugs were recovered in the motorbike **exhibit P3**, furthermore, I am also satisfied that the oral evidence of **PW5** and **PW7** as civilian independent witnesses was unbroken and the chain of custody was proven.

All in all, this court is not persuaded by the accused person's defence that he was framed and the drugs were planted on his motorbike by the officers from ZDCEA, after all the fact that he did not stop when asked to stop by officers of ZDCEA tells the whole story.

In this end, this court is satisfied that, the prosecution has managed to prove beyond reasonable doubt that the accused person **Rashid Ramadhan Haji** was unlawfully in possession of drugs contrary to **section 21 (1) (d) of the Act No. 8 of 2021** and therefore this court find the accused person guilty and convict him for the offence of being unlawfully in possession of drugs contrary to **section 21 (1) (d) of the Act No. 8 of 2021**.

Having convicted the accused person, this court is now sentencing the accused person **Rashid Ramadhan Haji** to serve the term of **seven (7)** years in Education Center.

Furthermore, I also order **exhibit P2** be disposed and destroyed in accordance with the provision of **ZDCEA Act No. 8 of 2021** and its Regulations.

MITIGATION

DPP:

Your honor, we pray for harsh sentence according to the law. we have no previous record.

Hon. Said H. Said (j)

05/10/2023

ACCUSED

I have family and children depending on me. I am also sick and not well. Hence I pray for this Court to consider my condition and give me a lenient sentence. I am also a fresh offender.

Hon. Said H. Said (j)

05/10/2023

COURT

The Court has taken into account the litigation factors raised by the accused person. Taking all that in consideration. I will give a sentence of seven years in Education Centre.

Ordered accordingly.

Hon. Said H. Said (j)

05/10/2023

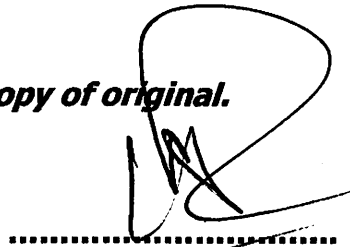
Right of appeal is explained to the parties.

Hon. Said H. Said (j)

05/10/2023

Dated: **5th October, 2023.**

I certify that this is a true copy of original.

A handwritten signature in black ink, appearing to be 'M. Said', is written over a horizontal dotted line.

REGISTRAR

HIGH COURT-ZANZIBAR