

**IN THE HIGH COURT OF ZANZIBAR  
AT TUNGUU  
CRIMINAL CASE NO. 116 OF 2022**

**DIRECTOR OF PUBLIC PROSECUTION  
VS  
JUMA SULEIMAN JUMA**

**JUDGEMENT OF THE COURT**

01/11/2023 & 07/03/2024

**KAZI, J.:**

Through information, the accused person, Juma Suleiman Juma, was indicted in this Court for two counts namely, Misappropriation of Property and Revenue contrary to section 42 (1) (a), 60 (1) and 61 of **Zanzibar Anti-Corruption and Economic Crimes** Act No 1 of 2012 of the Laws of Zanzibar, and Misappropriation of Property and Revenue contrary to section 42 (2) (b), 60 (1) and 61 of the same Law.

The particulars of the offence for the first count indicate that between 04<sup>th</sup> March 2019 and 22<sup>nd</sup> October 2019 at Kivunge within North "A" District in the Northern Region of Unguja, the accused acquired unlawfully various medical devices, to wit, one pair of latex sterilized surgical gloves, two pieces of chromic catgut, and medicine which were ten ampoules of oxytocin injection, water for injection 10ml, 120 tabs of paracetamol 500mg. The value of the said medicine was stated to be Tanzanian Shillings fourteen thousand, three hundred and forty-three (14,343/-), the property of the Revolutionary Government of Zanzibar.

The particulars of the second count indicated that between the same period, the accused unlawfully acquired devices and medicine stated in the first count by non-compliance of the applicable procedure relating to allocation and disposal of the Government medicines.

At the trial, Mr Suleiman Yusuf Ali, the learned State Attorney, represented the Director of Public Prosecution (DPP). The accused was initially represented by Mr Omar Sheha, a learned advocate, but later by Ms Hafsa Ame.

In a bid to prove its case, the prosecution marched ten witnesses, namely Nassir Salum Buheti (PW1), an employee of Zanzibar Food and Drug Agency (ZFDA), Mwadini Ahmada Mwadini (PW2) who was also an employee of ZFDA during the period alleged offences was committed, Hafsa Habib Omar (PW3) a pharmacist at Makunduchi Hospital, Hidaya Abdalla Ali (PW4), Hadija Rashid Khamis (PW5), and Mariam Mohamed Omar (PW6) both employees of ZAECA, Thureya Bakari Jabu (PW7) a retired employee from Ministry of Health, Said Yusuf Said (PW8) former employee of Central Medical Store, Tamim Hamad (PW9) a Doctor at Kivunge Hospital, and Latifah Khamis Said (PW10) employee of Central Medical Store. Further, the prosecution tendered a confiscation form (No 16) (Exhibit P1), medicine and medicine devices (equipment), which are one surgical glove, two boxes of paracetamol 500mg, ten Oxytocin injections, two catgut and 29 water for injection (Exhibit P2), Employment Confirmation Letter (Exhibit P3). Moreover, during the trial, the admissibility of some of the prosecution documents was challenged

by the defence side, but to accelerate the trial, the said documents were tentatively admitted with the note that their admissibility shall be considered in this judgment. Thus, the documents which were tentatively exhibited are the certified document titled 'Item Ledger for Oxytocin 5 IU, 1ml Inj ES20070' (Exhibit P4), the Customer invoice (Invoice) (Exhibit P5), and the document titled 'Warehouse copy' (Pick List) (Exhibit P6). In defence, the accused was the lone witness.

From the prosecution evidence, PW1, ZFDA's officer, in October 2019, was working at ZFDA's office in Mombasa as a marketing surveillance pharmacovigilance. On 15<sup>th</sup> October 2019, he was acting as head of the Department of Pharmacy and Cosmetics, when he received information from PW2 that at Mto Barafu, there was a pharmacy operated without ZFDA's permit. Having received such information, PW1 prepared an inspection team headed by himself, and on 22<sup>nd</sup> October 2019, at about 8:00 pm, they went to Mto Barafu for inspection. He told the Court that he was with PW2 and their intern, PW3, at the inspection. When they arrived at Mto Barafu at the shop known as Mto Barafu OTC, they met PW4, who was working there. PW1 testified further that they introduced themselves to PW4 and requested ZFDA's permit and certificate from PW4, but she did not have it, which means, according to PW1, the said shop was not registered. PW1 went further, testifying that they proceeded to inspect the shop and found some medicines and equipment that were not permitted to be sold at the OTC shop. PW1 told the Court that they have two kinds of medicine in the market: prescription-only medicine and OTC medicine. He emphasized that prescription medicine is found only in pharmacies and hospitals. They

are not permitted to be in the OTC shop. PW1 said that they found eight kinds of restricted prescription medicine and medical equipment at the shop: one BP Machine, one Glucoplus Machine, and six prescription medicines, some of which belonged to the Government. He mentions them as follows: 100 tablets of paracetamol 500mg, 16 tablets of misoprostol 200mcg, two catguts, 29 water for injection, ten oxytocin injections, ten amps, and one surgical glove. Having discovered that, PW1 told the Court that they asked PW4 why she had the prescription medicine, and she responded that it was Dr Juma, Kivunge pharmacist (accused), who brought the medicine there. PW1 testified further that, according to their procedures, after discovering the prescription medicine at the OTC shop, they were required to close the shop, so they closed it and instructed PW4 to report to their offices. PW1 contended that they then collected unauthorized medicine and equipment and went to store them at his office in the special cabinet which used to store medicine.

In confiscating the medicine, PW1 told the Court that they filled out Exhibit P1 (Confiscation form) with relevant information, the form which PW4 also signed. On 23<sup>rd</sup> October 2019, PW1 reported the incident to his boss, the Executive Director of ZFDA. After receiving the information, the executive director instructed PW1 to report the matter to ZAECA. PW1 stated that they reported the matter to the Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA) and provided them with their statements. He said further that on 12<sup>th</sup> December 2019, they sent exhibit, to wit, 120 tablets of paracetamol, two catguts, 29 water for injection, one surgical glove, and ten oxytocin injections, ten amps, to ZAECA. PW1 testified further that all Government medicines have

special marks from the Medical Store Department of Tanzania (MSD) and that medicines purchased from other sources have different batches and are known through relevant batches of such medicines. PW1 told the Court that he knew the accused before they inspected PW4's shop. When testifying, PW1 properly identified the medicine and devices confiscated from PW4's shop and successfully tended them in court as Exhibit P2.

When responding to the questions asked by the accused's advocate on cross-examination, PW1 stated that Oxytocin doesn't have an MSD mark but can be identified through its batch. He further stated that they did not search the shop in question, but they found Exhibit P2 when inspecting the shop. In his further reply to the questions, he contended that they delayed handing Exhibit P2 to ZAECA because they were not informed that they were needed, but on 12<sup>th</sup> December 2022, ZAECA wanted them to hand the exhibit to them, and they (ZAECA) went to ZFDA's office at about 2:00 pm to collect them. He contended further that they handed Exhibit P2 to ZAECA without filling out any form or written document, and when they handed the exhibit to ZAECA, the accused person was not there. Moreover, when responding to the question asked by the Court, PW1 stated that they handed Exhibit P2 to one Mariam, a ZAECA official, who sealed the exhibit after receiving it.

As testified by PW1, PW2 and PW3 were also directly involved in the matter as key witnesses. They were with PW1 on 22<sup>nd</sup> October 2019 at Mto Barafu at PW4's OTC shop. Thus, their testimony was significantly linked to that of PW1.

PW4 is the person who was working at the Mto Barafu OTC shop when the alleged crime was committed. She told the Court that on 22<sup>nd</sup> October 2019 at about 8:00 pm, three officers from ZFDA, two male and one female, went to her shop and requested a permit. But as she didn't have it then, the officers inspected the shop and found Government medicines. She testified that the medicine that was found in her shop were oxytocin, 120 tablets of paracetamol, one pair of surgical gloves, 29 water for injection, and two catguts. She proceeded to testify that the said officers also took a BP machine, telescope, and glucometer from the shop. PW4 testified that she was given a form to write his name and append her signature, but she wasn't informed what was in the form that she put her name and signature. She testified further that at the shop and the ZFDA's office, she wasn't asked where she got the medicine in question from, but it was the ZAECA's officers who asked her that, and she responded to them it was Juma, a Doctor from Kivunge (accused person) who brought the said medicine to their shop twice at night. In her testimony, PW4 told the Court that she did not sign Exhibit P1 as it was not the one which the ZFDA's officers gave her, but she noted that Exhibit P1 had her name and signature. Later in her testimony, she confirmed that Exhibit P2 are the medicine that was confiscated from her shop.

In cross-examination, PW4 stated that she purchased medicine from different sources, such as a pharmacy. She further stated that no one witnessed the accused selling medicine to her, and there is no written agreement between them or evidence showing that the accused was selling medicine to her.

PW5 is ZAECA's storekeeper. In her testimony, she stated that on 12<sup>th</sup> December 2019 at 3:15 pm, while she was in his office, she received from her colleague, Mariam Mohamed Omar (PW6), a khaki envelope size A4 with mark reference ZAECA/HQ/P1/146/2019 (Exhibit P2) was reserved in the said envelope). After receiving it, she stated, she placed it in the exhibit cabinet, the cabinet in which its key is under her possession. PW5 then told the Court that on 15<sup>th</sup> July 2020 at about 9:45 am, PW6 took the said exhibit from her to send it to the Court and returned it on the same day at 1:00 pm. She testified further that she kept the exhibit in the exhibit cabinet up to 23<sup>rd</sup> May 2023 at about 8:20 am, when PW6 went to her to collect it again to send the same to the Court.

When asked a question by the accused's advocate during cross-examination, PW5 told the Court that, in exhibit handling, they fill out their information in a special book. The information includes what to be handed, time, the person handing it and the receiver, and their signatures. She also responded to the question asked by the learned advocate that the said special book was not brought to Court.

PW6 is an officer from ZAECA and an investigator of this matter. She told the Court that on 08<sup>th</sup> November 2019, when she was in her office at about 9:00 am, she was given a file by her boss with the number ZAECA/HQ/P1/2019. She said that information on the said file showed that ZFDA's officers confiscated medicine suspected to be government property in Kinuni's area at the OTC shop known as Mto Barafu. PW6 swore that in her investigation, she went to ZFDA's offices on 12<sup>th</sup> December 2019 and met the officers who confiscated the medicine in

question to collect their statements and the alleged medicine. She stated further that the concerned ZFDA officers were Nassor Salum Buheti (PW1), Mwadini Ahmada Mwadini (PW2), and Hafsa Habibu Omar (PW3). She maintained that she took their statements and collected the exhibit (Exhibit P2) from PW1, which was Government medicine which contained 10 Oxytocin injections, 29 water for injection, two boxes of paracetamol containing 120 tablets, one surgical glove, and two catguts. After receiving the exhibit and the statements from ZFDA's officers, she returned to her office, put the exhibit into the A4 khaki envelope, and marked it ZAECA/HQ/P1/146/2019. She stapled the exhibit and handed it to the storekeeper, PW5, on the same day at about 3:30 pm. PW6 stated that she interviewed PW4 and the Doctor in charge of Kivunge Hospital, PW9 in her further investigation. She stated that PW9 confirmed that the accused is an employee of Kivunge Hospital as a pharmacist. She also interviewed PW10, who is an employee of Central Medical Store (the Store) and the one who is responsible for supplying medicine from the Store to hospitals. In her investigation, she interviewed PW7, a retired human resource officer from the Ministry of Health, who provided her with a letter showing the accused was employed by the Ministry of Health. She also collected exhibits such as Exhibit P1, a medical valuation report from the Store, a Check Picklist from the Store and Kivunge Hospital, and an Employment confirmation letter for the accused (Exhibit P3). In her investigation, PW6 stated that she confirmed that Exhibit P2 are a government properties. She also interviewed the accused, who confirmed to her that he is a pharmacist at Kivunge Hospital and an employee of the Ministry of Finance.



When cross-examined, PW6 told the Court that in her investigation, she didn't go to Kivunge Hospital, where the medicine was stolen, as there was no need for that. She further told the Court that she didn't know if the accused worked alone in his office. She stated further during cross-examination that when she collected Exhibit P1 and P2 from ZFDA's office, they filled up the handing over document, and she stated that she did not see the need of tendering in Court the said handing over document. She stated further that she handed the exhibit to the storekeeper without filling up the handing-over document.

PW7, a retired human resource officer from the Ministry of Finance, stated in her testimony that she doesn't know the accused, but she confirmed that a person known as Juma Suleiman Juma was an employee of the Ministry of Health who was employed in 2012. He was working at Kivunge Hospital as an assistant pharmacist. She told the Court that the employment confirmation letter (Exhibit P3) confirmed that Juma was employed by the Ministry of Health.

Another witness from the Ministry of Health is PW8, who used to work in the Store, a department of the Ministry of Health, as head of procurement and stock management. In his testimony, he described some of his duties at the Store, including coordination of medicine purchases. He stated that in doing so, they prepare orders for the medicine needed and present them to the Pharmacist General for the purchase. After the medicine purchase and after the Store receives them from the supplier, they check the quality and quantity of the medicine before recording them in the system. This system stores the information

of the medicine recorded. PW8 further testified that they could identify the medicine by its generic name and batch number. He added that they can also identify them by the MSD logo for the medicine purchased from Tanzania. He continues testifying that the purchased medicine has a code called CMS Code (Central Medical Store Code), and they put a list of the medicine's expiration date. PW8 maintained that they recorded all the above information to the system. In his further testimony, PW8 contended that on 14<sup>th</sup> July 2020, he was asked by his boss to report to ZAECA, and between 16<sup>th</sup> and 17<sup>th</sup> July 2020, he went to ZAECA's office and met PW6, who wanted him to identify some medicine and tell if they belonged to the Government or not. He was then given an envelope which had five different medicines. He averred that there were ten bottles of Oxytocin injection, two boxes of paracetamol with 120 tablets, 29 bottles of water for injection, two chronic catguts, and one pair of surgical glove. PW8 stated that he confirmed that all medicines belonged to the government as they had the MSD logo. He then went to his office to check into the system and found that three types of medicine out of the five shown at ZAECA were in the system. He contended that the medicine was in ZFDA's system, and that meant they were received by the Store and supplied to different hospitals. They were Oxytocin, water for injection and paracetamol. He said the cost estimation of the said medicine as per the Central Medical Store price catalogue of 2019 is as follows: a tab of paracetamol each is Tsh. 12/-; therefore, the total of 120 tabs was Tsh. 1,440/-; each bottle of oxytocin was Tsh. 1270, the total costs for ten bottles were Tsh. 12,700/-; the price of each bottler for water for injection was Tsh. 7/-, the total price for 29 bottles was Tsh. 203/-. The total for all three types of medicine was Tsh. 14,343.

PW8 testified further that he prepared a report (Exhibit P4) as a ledger for his discovery, in which he put his name, signature, and date at the bottom. He also certified it. He added that he certified the report as it is information retrieved from the system. PW8 then prayed to tender the said report, a prayer to which the defence attorney objected. As I have mentioned earlier, to accelerate the trial, I did not resolve the point of objection regarding the admission of the said report; I did admit it tentatively with the note that I would consider its admissibility in my verdict. Later, in this judgment, I will consider this issue.

In the cross-examination, PW8 stated that when hospitals or health facilities wanted a medicine, they sent a request report to them, put the report into the system, and processed the supply of the medicine to the health facilities. He stated further that they received requests through the system from the pharmacy departments of the health facilities through the District Health Pharmacist.

PW9 was a doctor in charge of Kivunge Hospital. In his testimony, he explained the procedure used by the hospital in requesting the medicine from the Store. He stated that in making a request, a pharmacist prepared a list of the medicine needed and sent a request through the system to the Store. After receiving the request, the Store will notify the requesting hospital of the receipt of the request and the availability of the medicine requested. The store also informs the hospital when the medicine will be supplied to them. PW9 testified further that upon receiving the medicine, he is informed by the pharmacist and asked to make reconciliation. They reconcile by reviewing the request list and the list of received medicine. They put a tick for the medicine received and a

letter X for the item not received. After receiving the medicine, they store it and later supply it to the ward, depending on the request from the ward in charge. He went on to testify that they recorded in the book all the medicine distributed within the hospital, and the person who was responsible for that was a pharmacist. He added that they also supply medicine to other health facilities after receiving a request from the district pharmacist. PW9, in his testimony, contended that the pharmacist of their hospital who is responsible for supplying medicine within and outside the hospital was Juma, the accused in this case. He also testified that their system was not working before 01<sup>st</sup> January 2019, so they used manual way through books and papers to record and request the medicine. PW9 stated that he remembered that between March and July 2019, they received medicine from the Store. He maintained that they received the said medicine through the invoice dated 13<sup>th</sup> June 2019, 04<sup>th</sup> March 2019 and 23<sup>rd</sup> July 2019. The said invoices had the name of hospital, Kivunge Cottage Hospital, signature of pharmacist who received the medicine, Hassan who is an assistant pharmacist. PW9 finally confirmed that it was not indicated in the invoices that the accused received the medicine.

At the cross-examination, PW9 told the Court that when he was in charge, Kivunge had eight pharmacists. He further told the Court that in Kivunge Hospital, they used books to record the distribution of the medicine within the hospital. He stated that the accused was a pharmacist in charge and that Hassan received medicine on Juma's behalf.

The last prosecution witness, PW10, an employee of the Store whose duty is to supply medicine to all hospitals and health facilities, started her testimony by describing the procedure for supplying medicine to the health facilities. She stated that their clients (hospital/health facility) requested the Medical Store Customer Care Unit through the Zanzibar Integrated Logistic System. After receiving the request, the Unit prepared a pick list, which is the form for discharging a requested item. She contended further that the pick list, after being prepared, is registered by the clerk, and after the registration, they are notified that the pick is complete. PW10 went on testifying that after the pick registration, she took the item from the Store and handed it to the dispatch officer for confirmation on whether the pick was correct. After the confirmation, the dispatch officer notifies the distribution officer, and the distribution officer then informs the recipient that his package is ready for delivery. PW10 contended that the items are sent to the receiver by the officer from the Store, and when the health facilities receive them, they are opened for confirmation. She stated that the items are sent to the receiver with two invoices, one for the warehouse and one for the customer. Therefore, in confirming the items, the same are counted at the health facilities to see if they are correct in numbers and as per the invoice. When everything appears in order, the supplier and customer sign the invoice, stamp it, and insert in it the date of the supply and receiving of the items. She also stated that the customer invoice is left to the customer after the delivery of the items. It was her testimony that on 26<sup>th</sup> January 2021, she was summoned by ZAECA. Therefore, she went to ZAECA and was told about the missing medicine (Exhibit P2). She was also given an invoice to identify, and she

acknowledged them as they were their invoices. She went on to testify that she recognized the invoices by their title, which is Zanzibar Integrated System, and the name of the hospital, which is Kivunge Cottage Hospital. She stated further that the invoice had her name and signature, as well as the name of the client Juma Suleiman Juma and his signature. She contended further that such invoices were for the years 2021 and 2019 and that Juma, an accused in 2019, was responsible for receiving medicine from the Store. In her testimony, PW10 also identified the pick list, which had the name Zanzibar Integrated System and the names of the staff who prepared it: one Mariam, the dispatch officer, Nasra, a person who collected packages from the Store, Hafsa, and Distribution officer, one Hussein. Having identified the invoices and pick list, PW10 prayed to tender them as an exhibit in this case, the prayer to which the defence advocate objected, her reason being that the documents were inadmissible as they were not original. Once again, for the same reason, I tentatively admitted them as Exhibit P5 (invoice) and Exhibit P6 (Pick List) with a judicial note that their admissibility will be considered in this judgment.

An accused (DW1) testified under oath in his defence and called no witnesses to support him. He started his testimony by claiming that the offences laid against him were baseless and that he did not commit the crimes he was accused of. He told the Court that he had previously worked at Kivunge Hospital under the Ministry of Health. But now he is not working as he has been suspended from work. He further stated that in Kivunge, he has been a pharmacist in charge since 2015. He said that in his office, there were seven officers, and they used to enter the

office by shift. He maintained that according to their shift roster, the morning shift is covered by two staff and one orderly. He said that the morning shift ended at 3:00 pm, and the staff who started the afternoon shift were informed of all medicines that were in stock and those that were not; he was also given the key to the hospital store. DW1, in his evidence, informed the Court of the procedure for receiving or supplying medicine. He stated that one staff and an orderly are supposed to be in the hospital store to render services to all hospital departments. In supplying medicine, he said, where a person needs medicine, he must list all medicine or medical equipment he wanted in the requisition book. He testified that in supplying medicine to the other hospital's department, the head of departments requested the medicine through a requisition book and handed the book to him. After receiving the book, he supplies the medicine to the one requested according to the request made in the requisition book. If it appears the medicine requested is out of stock, the requester is informed, and the request is cancelled from the book. DW1 averred that there is no place apart from the hospital departments to which the medicine is supplied. He further claimed that apart from him, his colleague Hassan Juma, a pharmacy technician, is responsible for the hospital store. He further contended that Kivunge Hospital Medicine Store has an aluminium gate and a wooden door, and both have a lock; further, there is a security officer at the gate.

In cross-examination, DW1 stated that he was responsible for receiving medicine from the Store and supplying it to the departments of Kivunge Hospital. He further stated that he knew all medicine received and supplied within Kivunge Hospital from 2015 to 2020. He also confirmed

that Government medicine has a distinct mark, and it is not allowed to be sold to a private pharmacy.

When responding to the court's questions, DW1 stated that Kivunge Hospital conducts store audits annually and that during the period between 2015 and 2020, their store audit did not detect any medicine loss.

After the defence case closed, the accused's advocate made her final submission. She submitted that all witnesses failed to provide strong evidence that the accused was responsible for the offences charged. She added that the invoices don't show all the medicines allegedly stolen, as indicated in the information (charge sheet).

I have considered the evidence for the prosecution and the defence. From the evidence adduced, the main issue for determination is whether the prosecution has proved its case beyond the shadow of a doubt. In determining that, three important questions need to be resolved which are: whether the accused person misappropriated property and revenue of the Government by acquiring Exhibit P2 unlawfully; whether the accused person misappropriated property and revenue of the Government by acquiring wilfully Exhibit P2 in noncompliance with the applicable procedure relating to allocation and disposal of the Government medicine and; whether the accused person has tossed doubt upon the prosecution's case.

However, before I embark on resolving the abovementioned issue, it is proper to consider the admissibility of documentary evidence, which was tentatively admitted as Exhibit P4, P5, P6, and P7. The accused's



advocate at different times objected to all exhibits because they were not original documents. When objecting to the admissibility of Exhibit P4, the defence counsel submitted that the document the prosecution side prayed to tender (Item ledger) was not original; it is a certified copy and that the Court has not been informed of the whereabouts of its original copy. Mr. Ali, the learned State Attorney, opposed the defence side's submission; he urged the Court to admit the exhibit in evidence, his reasons being that exhibit P4 is an original document, though it was labelled as a certified copy.

I have considered the parties' submission, and I concur with the defence submission that exhibit P4 does not qualify to be admitted in evidence because, legally, it is not an original document. From the testimony of PW8, it was revealed by the witness before he tendered the exhibit in question that the information contained in exhibit P4 was retrieved from the system, and that is why the document (exhibit) was certified. It is, therefore, without a doubt, that the document admitted tentatively as exhibit P4 is an electronic document, and its admission must be in conformity with section 73 of the **Evidence Act** No. 9 of 2016 (the Act). The Act clearly states that computer output is secondary evidence; hence, for such evidence to be produced in court, the conditions stated in section 73 of the Act must be fulfilled. Section 73 of the Act provides as follows:

*"73.-(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer hereinafter*

*referred to as the computer output, shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

*(2) The conditions referred to in subsection (1) of this section in respect of a computer output shall be the following:*

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- (b) during that period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of those activities;*
- (c) throughout the material part of that period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of*

*the period, was not such as to affect the electronic record or the accuracy of its contents; and*

- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of those activities."*

Subsection (4) (a) (b) (c) of section 73 of the Act provides: -

*"(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following:*

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;*
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; or*
- (c) dealing with any of the matters to which the conditions mentioned in subsection (2) of this section relate,*

*and purporting to be signed by a person occupying a responsible official position in relation to the operation of*

*the relevant device or the management of the relevant activities, whichever is appropriate, shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."*

Therefore, as PW8 retrieved the contents of the document in question from the system, which was electronically created and saved, its admission is rejected since its production did not follow the mandatory conditions stipulated under section 73 of the Act. I will, therefore, not consider exhibit P4 in resolving this case.

As for the admissibility of exhibits P5, P6 and P7, the defence counsel, in her objection, submitted that all documents were not original. The prosecution side agreed that all three exhibits were copies which were generated from the system, printed and photocopied. However, he maintained that as they had been certified they could be treated as a copy of the original source.

I will only spend a little bit of time on this. The prosecution side has clearly submitted that the documents which were tentatively admitted as exhibits P5, P6 and P7 were generated electronically from the system; they are all electronic documents and hence subjected to section 73 of the Act before they can be tendered and admitted as evidence. See, **DPP vs Kassim Idrissa Mussa and 4 Others** (Criminal Case 85 of 2022) [2023] TZZNZHC 52 (11 May 2023) and **Zanzibalue Resorts**

**Limited vs Villa Nour Bungalows Limited & Another** (Civil Case 70 of 2020) [2023] TZZNZHC 89 (30 August 2023).

As the production of the exhibits admitted tentatively as Exhibit P5, P6 and P7 as well did not conform with section 73 of the Act, all three exhibits are not admitted in evidence, and I will not consider them in this judgment.

Let me now move to the merit of the case. In considering whether the prosecution side has proved its case beyond a reasonable doubt, I will begin by considering undisputed facts regarding both counts.

From the evidence adduced by the witnesses from both sides, it is uncontested that Exhibit P2 is the property of the Government of Zanzibar, which on 22<sup>nd</sup> October 2019 was found in the OTC shop located at Mto Barafu by the ZFDA's officers to wit PW1 and PW2, and thereafter seized since it was restricted medicines and medical devices. It is also uncontested that Hidayya Abdalla Ali (PW4) was responsible for the said OTC shop, and on the material date, she witnessed Exhibit P2 seized by the ZFDA's officers. Moreover, it is not disputed that the accused person was a pharmacist in charge at Kivunge Hospital on the date in question.

Well, what is contested in regard to the first count is whether the accused person misappropriates property and revenue of the Government by acquiring Exhibit P2 unlawfully.

Did the accused unlawfully acquire Exhibit P2?

It is instructive that in criminal cases, the prosecution must prove every detail stated in the particulars of the offence. The particulars to the first count suggested that the accused person, between 04<sup>th</sup> March 2019 and 22<sup>nd</sup> October 2019, while he was at Kivunge within North "A" District in the Northern Region of Unguja, unlawfully acquired Exhibit P2. Therefore, the prosecution side's duty is to parade evidence to establish the details above. From the summary of the prosecution evidence, it is apparent that there was no evidence which indicated that the accused person acquired Exhibit P2 from Kivunge Cottage Hospital. To a great extent, the evidence adduced by the prosecution side portrayed the procedure used in supplying medicine and medical devices from the Stores to the hospital and health centres, including Kivunge Hospital, and the procedure used in allocating the same within Kivunge Hospital. The only evidence which pointed a finger at the accused is that of PW4, a person responsible for the OTC shop in which Exhibit P2 was discovered. According to her testimony, she claimed that she received Exhibit P2 from the accused person. Her evidence, however, was not supported with any concrete evidence. PW4 did not reveal the exact dates when she received Exhibit P2. Further, she did not disclose if she bought it or if the accused gave it for free. PW4 has even failed to describe her relationship with the accused person to convince the Court that what she testified could be true on what she alleged of how Exhibit P2 came into her possession. As it stands, PW4 evidence alone is not enough to establish that the accused person acquired Exhibit P2 from Kivunge.

On the other hand, DW1, in his evidence, re-counted his regular work while he was at Kivunge as a Pharmacist in charge. He and his seven juniors were working by shifts, morning and afternoon shifts. He also narrated how the medicine is supplied to the departments within Kivunge Hospital through a requisition book. Moreover, it was revealed by DW1 that Kivunge Hospital conducts store audits annually. It was also revealed that during the period between 2015 and 2020, their store audit did not detect any medicine loss. Seemingly, the accused person has thrown doubt upon the prosecution's case.

If you look at the adduced evidence as a whole, the prosecution witnesses failed to establish if Exhibit P2 was acquired by any means from Kivunge Hospital. There was no evidence showing that there were medicine and medicine devices misses from Kivunge Hospital's Store and that the accused took them. What was established by the witnesses from both sides is that Exhibit P2 is Government property, but there is nothing that explains which hospital, health centre or institution of the Government Exhibit P2 was taken from and by whom. It is clear that the prosecution witnesses have failed to prove every detail stated in the particular of the first count. That is to say, the question of whether the accused person misappropriates property and revenue of the Government by acquiring Exhibit P2 unlawfully is not affirmed.

Next is the second count. The question is whether the accused person misappropriates property and revenue of the Government by wilfully acquiring Exhibit P2 in noncompliance with the applicable procedure relating to the allocation and disposal of Government medicine. I will

respond to this question fleetingly! The answer is negative. It should be noted that the second count is reliant on the first count in which the prosecution side failed to establish that the accused person unlawfully acquired Exhibit P2. By that state of affairs, the second count will not survive. The evidence brought by the prosecution side was not enough to prove every detail of this count as well.

In the upshot, and for the foregoing reasons, I find that the prosecution side has failed to prove its case beyond reasonable doubt. Therefore, I find the accused, Juma Suleiman Juma, not guilty and I hereby acquit him from the indicted offences of Misappropriation of Property and Revenue, and Misappropriation of Property and Revenue. He is accordingly set at his liberty. Order accordingly.

Dated in Tunguu, Zanzibar this 07<sup>th</sup> March 2024.



**G. J. KAZI**  
**JUDGE**  
**07/03/2024**



