

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU
CRIMINAL CASE NO 61 OF 2022**

**DIRECTOR OF PUBLIC PROSECUTION ... PROSECUTOR
VS**

SULEIMAN KHAMIS FIKIRINI 1ST ACCUSED

JUMA MTUMWA HAJI 2ND ACCUSED

ISSA SEIF SULEIMAN 3RD ACCUSED

JUDGEMENG OF THE COURT

22/05/2023 & 20/06/2023

KAZI, J.:

Suleiman Khamis Fikirini, Juma Mtumwa Haji and Issa Seif Suleiman were together charged with two offences, namely, being found with possession of narcotic drugs contrary to section 21 (1) (d) of the **Zanzibar Drugs Control and Enforcement Authority Act** No 8 of 2021 (the ZDCEAA), and being an occupier of premises which used for drugs offences contrary to section 25 of the ZDCEAA. It has been alleged in the particulars of the first count that on 06th June 2022 at about 6:00 pm at Kianga in the West 'A' District within the Urban West Region of Unguja, the accused altogether were found in unlawful possession of narcotic drugs namely heroin weighing 47.792 grams. Regarding the second count, it was

alleged that on 06th June 2022 at about 6:00 pm at Kianga in the West 'A' District within the Urban West Region of Unguja, all accused person was found as occupiers of the residential house with number MG/K/SH/962 (the house) which was unlawfully used for conducting drug business.

As all accused pleaded not guilty to the information, the preliminary hearing was conducted, followed by a trial. The prosecution called six witnesses and tendered two exhibits to prove the case at the trial. On the other side, the defence had three witnesses who were the accused persons.

In this case, Mr. Suleiman Yusuf Ali, learned State Attorney, represented the Director of the Public Prosecutions (DPP), whereas Mr. Rajab Abdalla Rajab, learned advocate, defended all accused persons.

The relevant facts of the case, as can be gathered from the examination of prosecution witnesses, are that on 06th June 2022 at about 5:30 pm, Issa Yusuf Matias (PW2), the officer from Zanzibar Drugs Control and Enforcement Agency (ZDCEA), while he was on patrol, along with his colleague Soud Hassan Ali (PW3), at Kianga area, he received information from their informant that there was a house which people were

conducting drugs business. As they were near Kianga, they went near the house, which was numbered MG/K/SH/962 and reached there at about 5:50 pm. On their arrival, they decided to wait for an independent witness, and later the said witnesses arrived. The independent witnesses, according to PW2, was Sheha, Rajab Abeid and Deputy Sheha, Juma Bakari Said (PW6). At about 6:00 pm, they entered the accused house and found three people at the sitting room wrapping drugs into the aluminium foil paper. Therefore, he arrested them. Later he disclosed his identity to them, that they are officers from ZDCEA and introduced independent witnesses to them as well. PW2 then asked the accused to disclose their identity, and they did. After the introduction, PW2 requested the accused to show him what was being packed into the aluminium foil. He also managed to discover powder which was on the floor that he suspected to be dangerous drugs. He also found 845 packlets that he confirmed to be narcotic drugs. Therefore, he collected all packlets and put them into a transparent plastic bag. He also took the powder from the floor and put it into another plastic bag. PW2 did all that in the presence of PW3, PW6, Sheha, and all accused persons. Later he warned the accused of the offence they are facing of being found with possession of suspected narcotic drugs.

At the house, PW2 also found a white weighing machine used to weigh drugs, aluminium foil and a knife. Afterwards, PW2 made the accused fill the certificate of seizure, which independent witnesses also filled out. He then took the accused and seized exhibits to their office, where they arrived at 7:00 pm. At the ZDCEA, PW2 recounted the packets and found the same number as what was found in the house. Later, in the presence of PW3 and all accused persons, PW2 opened a case against the accused, registered as ZDCEA/HQ/IR/80/2022, concerning being found with drugs and equipment used to weigh dangerous drugs. Afterwards, PW2 placed the exhibit in the khaki envelope, sealed the said envelope and marked it with identification number ZDCEA/HQ/IR/80/2022. He also marked with the same number a weighing machine. At 7:30 pm, PW2 handed over all exhibits for safe custody to the storekeeper, Aziza Amour Pandu (PW4). Before this Court PW2 identified two plastic bags. The plastic bag which contained 845 packets of a powder suspected to be drugs, wrapped in aluminium foil, and a small plastic bag containing brown powder, which he placed all of them in the khaki envelope and marked with number ZDCEA/HQ/IR/80/2022. Nevertheless, PW2 failed to show the Court the seal he put on the said envelope claiming that it was removed by the Government Chemist Analyst who put their seal on it. PW2 also identified a

white weighing machine, plastic bags, a knife, a spoon and pieces of aluminium foil, and he recognized all accused persons. PW3, who was along with PW2 from the time he received information concerning the accused to the time of their arrest, testified on how he witnessed PW2 receiving the information from the informant while they were on the patrol. He testified that they went to fetch the informant from his house and went to the accused house. According to PW3, their informant showed them the accused house. Similar to what was testified by PW2, PW3 revealed that they reached the accused house at about 5:30 pm, and before doing anything, PW2 called Sheha, Rajab Abeid and his member, Juma Bakari, who arrived there at 6:00 pm. PW3 testified that after the arrival of Sheha, they entered the accused house and found three people in the living room wrapping drugs. Later he witnessed all of them being arrested by PW2. Thereafter, PW2 revealed their identity to the accused person and asked the accused to introduce themselves. He witnessed further PW2 counting 845 packlets of drugs enfolded into the aluminium foil, gathered them and tools used in packing drugs such as a weighing machine, knife, foil and spoon. He witnessed PW2 warning the accused of the offence they were facing, of possession of suspected dangerous drugs. Moreover, he witnessed PW2 filing a certificate of seizure which was given to

Sheha and the accused to sign. PW3 testified further that after collecting all packets, PW2 put them into the transparent plastic bag, and he put the drugs not yet packed into another plastic bag. Later they took the accused and seized properties to their office, where they arrived at 7:00 pm. At their office, PW3 witnessed PW2 recounting the packets and found the total number was the same. He witnessed PW2 opening a criminal charge against all accused persons. The case was given number ZDCEA/HQ/IR/80/2022. At about 7:20 pm, PW3 witnessed PW2 placing 845 packets and small plastic containing powder suspected to be drugs into the khaki envelope in his presence and the presence of all accused. He went on testifying that PW2 then closed the khaki envelope and marked it with identification number ZDCEA/HQ/IR/80/2022.

At about 7:30 pm, PW3 witnessed PW2 handing the exhibit to the storekeeper, PW4, for safe custody. Then PW3 identified all the accused and the exhibit (a khaki envelope with 845 packets of aluminium foil and a small plastic bag containing powder suspected to be narcotic drugs), a weighing machine, four knives, a spoon and pieces of aluminium foil.

The storekeeper from ZDCEA, Aziza Amour Pandu (PW4), confirmed PW2 and PW3 story that on 06th June 2022, when she was at her office, she received an exhibit from PW2. She

testified that the exhibit was a khaki envelope sealed with the mark ZDCEA/HQ/IR/80/2022, a weighing machine, knives, spoons, small plastic bags and foil paper. After receiving the exhibits, she recorded them in the book and placed them into the special cabinet used to store the exhibit. She then stated that she is the lone keeper of the cabinet's key. PW4 testified that on 08th June 2022 at about 1:00 pm, she handed over to his co-worker, Stephano Khamis Meza (PW1), a request letter for an analysis of the exhibit, a form for sending the exhibit to the lab together with a sealed khaki envelope with mark ZDCEA/HQ/IR/80/2022, for him to send the exhibit to the Government Chemist Laboratory Agency (GCLA) for examination. On his side PW1, investigator of drug offences, testified that he received a request letter for analysis/examination, a form for handing over a sample of the exhibit to the GCLA, and a sealed big khaki envelope with identification number ZDCEA/HQ/IR/80/2022 from PW4. He took them to the GCLA and arrived at about 1:20 pm. At the GCLA, PW1 was received by Mohamed Saleh Khamis (PW5), a Chemist Analyst. The form, letter and exhibit were then handed physically to PW5 by PW1. After receiving the exhibit, PW5 opened the envelope in the presence of PW1 and took out a transparent plastic bag with 845 packlets of aluminium foil containing powder suspected to be dangerous drugs. He

further took out from the envelope another small transparent plastic bag containing powder, also alleged to be dangerous drugs. Later, PW5 registered the exhibit and kept it in the drawer pending authorization from the Chief Government Chemist through the Director of forensic chemistry to conduct an analysis of the exhibit. After being authorized, PW5 proceeded to the lab, where he began by weighing the exhibit and conducting a preliminary test followed by the final test. After completion of the test, he put a seal on the exhibit and prepared a certificate of analysis. The certificate of analysis was admitted in Court as exhibit P2, and later, PW5 read out its contents, confirming that the powder found from 845 packlets and the small transparent plastic bag was heroin weighing 47.792 grams. Exhibit P2 further revealed that heroin has consequences which lead to several diseases such as heart problems, liver, lung, dental, skin, kidney, cancer etc. After the analysis, PW5 handed over exhibit P2 and the exhibit (khaki envelope) to the concerned ZDCEA officer.

On 20th June 2022, at about 2:30 pm, PW1 returned the exhibit to PW4. It was sealed by the Government Chemist and marked with the same identification mark. PW4 after receiving the exhibits, she recorded them into the book and again placed them into the special cabinet. In her further testimony, PW4 contended that when she received an exhibit for the first time

from PW2, it had a red seal of ZDCEA, but in identifying the exhibit, however, she contended that it was a khaki envelope sealed with the GCLA's seal and a mark ZDCEA/HQ/IR/80/2022. Later she identified the exhibit (khaki envelope) with the seal of GCLA.

Juma Bakari Said, testified as PW6, is the Deputy Sheha, Shehia of Kianga. In his testimony, he recalls that on the date he doesn't remember, Sheha, Rajab Asedi Mvita fetched him, and they went to the area called Sharikia. Upon their arrival, they went to wait under the mango tree and later encountered seven or more people who went there. He testified further that the said people did not disclose their identity to them instantly. He added that later while he was still with Sheha under the mango tree, they saw those people surrounding one house which was there, and one of them climbed the wall (fence) of the said house. Then they heard the house door breaking, and later after five minutes, the person who entered the house by climbing the wall opened the main gate and asked them to enter. PW6 claimed to be the last person with Sheha to enter the house, and when entering, he found three people already under arrest and standing near the wall of the living room. Two of them were handcuffed. He also found the aluminium foil packets were already gathered. PW6 further testified that three or four persons who went there later counted the

packlets. Finally, PW6 stated that he did not remember the number of packlets found there but he recognised the ambushed persons (accused persons).

PW1, an officer from ZDCEA, did the investigation of the offence accused are facing. He testified that on 07th June 2022 at about 8:00 am, his in-charge gave him a file concerning dangerous drugs numbered ZDCEA/HQ/IR/80/2022. The complainant was PW2 and PW3 against the accused persons. He then narrated the steps he took in his investigation apart from sending the exhibit to the GCLA, interviewing accused persons who admitted the crimes, and visiting the crime scene with the complainant. In this Court, PW1 managed to identify the exhibit, which was the khaki envelope containing two transparent plastic bags in which one contained 845 aluminium foil packlets, and another had powder. PW1 counted in Court all 845 packlets. He then opened one packet where a brownish powder was seen. The khaki envelope, which contained 845 packlets and a small plastic bag of heroin, was tendered by PW1 and admitted in evidence as exhibit P1. PW1 also managed to recognize all accused persons.

After the closure of the prosecution case, the Court was satisfied that a prima facie case was made against all accused persons. Thus, the accused persons were informed of their

rights as provided under section 263 (2) of **the Criminal Procedure Act** No. 7 of 2018 (the CPA). All accused then opted to testify on oath.

In the defence, the second accused person Juma Mtumwa Juma testified as DW1. In his testimony, he contended that he is living in Kianga with his wife. He denied being found with the possession of narcotic drugs on 06th June 2022. He testified further that the circumstances portrayed that they were found with drugs doesn't justify that. He averred that he was inside his house and called Sele (1st accused) to assist him in mounting his TV on the wall and installing window hanger. He added that Issa (3rd accused) was there also helping him. DW1 further testified that on the material date, the door of his house was closed, and about seven people from ZDCEA ambushed them by climbing the wall (fence) and forcing their entrance to his house by breaking the door. He stated that the ZDCEA's officers were alone without Sheha or Deputy Sheha, as Sheha went there after they were arrested.

Further, he claimed that when the ZDCEA were inside his house, they started searching the living room, where they found nothing, then they went to search the rooms, kitchen and toilet, and they also found nothing. He averred that when they returned to the living room, they found one of the two

officers who was remaining there holding a small khaki bag, and at that time, four other people entered the house, two of them were Sheha and Deputy Sheha. DW1 told the Court they weren't informed anything at that moment but were taken into the car and transported to the ZDCEA's offices at Migombani.

Suleiman Khamis Fikirini (1st accused) was DW2. In his evidence, he denied being found with drugs on 06th June 2022. He claimed that on the material date, he was at Kianga, and officers from ZDCEA went to arrest them, but they were not found with narcotic drugs.

DW3 was Issa Seif Suleiman (3rd accused). In his defence, he also refuted the claim. He stated that on 06th June 2022, they were not found with heroin. DW3 maintained that they are not dealing with narcotic drugs and had never been involved with it. His further defence was that he went to Kianga to assist his friend, DW2, in installing the TV mount.

I have considered attentively the evidence adduced by both sides. However, it is important before I proceed to underscore the ingredients of the offences accused persons are charged with. Starting with the first offence of being unlawfully found with possession of narcotic drugs under section 21 (1) (d) of the ZDCEAA, which are the presence of substances which have been proved to have drugs related effect, the weight of the

narcotic drugs must be proved, and the possession of the narcotic drugs by the accused person. The ingredient for the second offence of being an occupier of premises used for drugs offences contrary to section 25 of the ZDCEAA is the presence of a person as owner or occupier or in charge of the house used for drugs offences.

To commence my determination, I will outline undeniable matters first. From the evidence adduced by both parties, it is not in dispute that, first; exhibit P1 is Heroin, second; the second accused is an occupant of house number MG/A/SH/962 located at Kianga, third; all three accused on 06th June 2022 at about 6:00 pm were arrested at Kianga into the second accused's house.

Leaving the undisputed facts aside, I am prepared to determine whether the prosecution has successfully discharged its duty of establishing both offences against all accused persons beyond a reasonable doubt. In doing so, my focus will be on the following issues: -

1. Whether all three accused were found in possession of narcotic drugs namely heroin weighing 47.792 grams.
2. Whether the chain of custody was intact.

3. Whether the house number MG/K/SH/962, located in Kianga, was used for narcotic drug businesses
4. Whether the first and third accused were the owner, occupier, or persons who oversaw house number MG/K/SH/962.

Starting with the first issue of whether all three accused were found possessing narcotic drugs, namely heroin weighing 47.792 grams. PW2 and PW3 are the material prosecution witnesses who narrated how they were tipped off by the informant when the two were patrolling in Kianga and how they called independent witnesses afterwards, and how they found the accused persons in the living room of house number MG/K/SH/962 wrapping drugs into the aluminium foil packets in the presence of independent witnesses, Sheha and his deputy (PW6). However, when questioned by the Court, PW2 provided a different story that they received information of the crime when they were at their office at around 4:00 pm and at the same time, before departing their office to Kianga, they called Sheha one Rajab Abeid. PW2, in his testimony, told the Court that the accused was arrested in the presence of Sheha Rajab Abeid and Deputy Sheha (PW6). But PW6's evidence differs from the evidence of PW2 and PW3. As, first, PW6 told the Court that when they were summoned and assembled

under the mango tree near the house, he found more than seven ZDCEA officers who later ambushed the house by climbing its fence wall and forcing their entry by breaking the door. Second, he denied witnessing the arrest, as when he was allowed to enter the house, he found two of the accused handcuffed. He also saw all three accused standing near the wall. In addition, PW6 named his Sheha, who was there with him, Rajab Asedi Mwita and not Rajab Abeid, contrary to what prosecution witnesses from ZDCEA claimed. PW6 evidence was confirmed by the defence evidence from DW1, who complained that more than seven ZDCEA officers ambushed them and were arrested without an independent witness. Further, in their defence accused denied being found with exhibit P1. According to DW1, exhibit P1 was from one of the officers from ZDCEA.

There is clear contradiction in the evidence of prosecution witnesses PW2, PW3 and PW6. Therefore, the credibility of prosecution material witnesses is at stake. I am mindful that it is a settled law every witness is entitled to credence and must be believed unless there are good and compelling reasons for not doing so. See; **Goodluck Kyando v R**, [2006] T.L.R 363. The Court of Appeal has also highlighted what should be considered as good reasons for not believing a witness, and that the Court in **Elisha Edward v Republic**, Criminal Appeal

No. 33 of 2018 [2021] TZCA 397 when referring their previous authority in **Mathias Bundala v The Republic**, Criminal Appeal No. 62 of 2004 quoted that: -

"Good reasons for not believing a witness include the fact that the witness has given improbable evidence, or the evidence has been materially contradicted by another witnesses."

Moreover, in the authority of **Shabani Daudi v Republic**, Criminal Appeal No. 28 of 2000 (Unreported), the Court of Appeal postulated more ways for testing the credibility of a witness, that: -

"The credibility of a witness can also be determined in other two ways, that is, one, by assessing the coherence of the testimony of the witness, and two, when the testimony of the witness is considered in relation to the evidence of other witnesses, including that of the accused."

As the evidence of PW2 and PW3 differs from that of PW6, the question now is which piece of evidence carries weight? The answer is simple, it is PW6's evidence that carries weight

against PW2 and PW3's evidence. Because it should be noted that PW6 was an independent witness and, under the circumstances, had no affiliation with the instant matter. Therefore, I believed his version, which was supported by the evidence of DW1 on how the accused was raided by more than seven ZDCEA officers, and that he wasn't involved in the search and arrest of the accused person. On the other hand, I find PW2 and PW3 untrustworthy witnesses because, as I have mentioned earlier, PW2, when testifying, claimed to be aware of the crime at about 5:30 pm when he was on patrol at Kianga along with PW3, this is contrary to what he revealed when questioned by the Court.

Furthermore, PW2 and PW3 claimed that they were only two on the material date while they were more than seven, as was disclosed by PW6 and DW1. The act of PW2 and PW3 of masking the exact number of the ZDCEA officers who raided DW1's house persuades my mind to draw an adverse inference on account of PW2 and PW3's questionable trustworthiness. PW2 and PW3 also testified that PW6 and Sheha were present when the accused was arrested, which PW6 and DW1 refuted. From what transpired from the evidence I have demonstrated, I am confident that PW2 and PW3 were not credible witnesses, and I am hesitating to rely on their evidence in my determination.

This issue now depends solely on the evidence of PW6 as an independent witness. In his testimony, he stated clearly that he did not witness the search as he was the last person to enter the house, and at that time accused was already apprehended, two of them were handcuffed, and the packets were already gathered aside.

The laws provide for the procedures for the search of the house and/or accused and the seizure of the item found after the search. These procedures are found under sections 145 to 149 of the CPA and section 41 and 42 of the ZDCEAA. Sections 145 to 149 of the CPA are applicable in ZDCEAA through section 41 (2) of the latter which provides: -

"Subject to the provisions of subsection (1) of this section, the Commissioner General or an authorized officer may, for better implementation of the provisions of this Act, comply with the provisions of the Criminal Procedure Act as the case may be."

A required prior condition before searching a premises etc, is for the search officer to possess a warrant. The rationale for the requirement of a search warrant is the protection of citizen's Constitutional right to dignity and privacy, as well as to

prevent abuse of powers of search and arrest, See; **Shabani Said Kindamba vs Republic** (Criminal Appeal No. 390 of 2019) [2021] TZCA 221, and **DPP v Chum Said Hussein** (Criminal Case 120 of 2022) [2023] TZZNZHC 55.

The mandatory requirement for an authorized officer to have a warrant authorizing him to search anything described in the warrant before affecting a search was recently accentuated by this Court in **Chumu Said Hussein** (supra), when the Court held: -

*"It is a trite law that **no search in premises shall be conducted without there being a search warrant.***

The authorized officers of ZDCEA are under legal obligation not to conduct search in private premises without a search warrant except in the circumstance stipulated under section 42 (1) of the Act No. 8 of 2021 which provides the following:

(1) The Commission General or an authorized officer may exercise any of the powers conferred under this Act without a search warrant if he believes that:

(a) It is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence; or

(b) *The circumstances are of such seriousness and urgency as to require the immediate exercise of the power without a warrant or order of the court.*

*I have underlined the word may exercise on the above section to show and highlight that **the section has made the search without obtaining a search warrant as discretionally based on the prevailing circumstance provided under that section, but mandatory obligation remain there to always conduct search with a search warrant**".*

[Emphasis Added]

From the strength of the authority quoted above, save for the exceptions provided under section 42 (1) of ZDCEAA, for the searching officer, that is to say, the Commissioner General or an authorized officer to conduct a search under section 41 (1) of ZDCEAA, he must possess a search warrant authorizing him to enter into the building, place etc., and search therein. It should be noted, however, that ZDCEAA does not have a provision relating to search warrant. Therefore, the issuance of a search warrant must be under section 145 (1) of the CPA, which provides as follows: -

*"Where it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary for the purposes of an investigation of any offence is in any building, vessel, carriage, box, receptacle or place, **the court may by warrant, called a" search warrant, authorise a police officer or other person therein named to search the building, vessel, carriage, box, receptacle or place which shall be named or described in the warrant for any such thing and, if anything searched for be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.**"*

[Emphasis added]

Furthermore, it is also vital for ZDCEA's officers to comply with the procedures for the search and seizure as stipulated under sections 148 (1), (4) of the CPA, and section 42 of ZDCEAA. Section 148 (1), (4) of the CPA provides as follows: -

"148 (1) Before making a search under section 145, 146 or 147 of this Act, the officer or other person

*about to make it, **shall call upon two or more respectable inhabitants of the locality in which the building or other place to be searched is situate to attend and witness the search**, and may issue an order in writing to them or any of them so to do.*

*148 (4) When a person is searched under the provision of subsection (3) of section 147 of this Act, **a list of all things taken possession of shall be prepared**, and a copy thereof shall be delivered to such person at his request."*

[Emphasis added]

And section 42 of ZDCEAA provides: -

*"The Commissioner General or an authorized officer shall, while exercising the powers of inspection and search, **invite two independent witnesses during inspection and search.**"*

[Emphasis added].

Thus, from the above extracts, two essential things must be present before searching a house and making an arrest. First, a

search warrant from the magistrate authorizing an officer or any other person to conduct a search, and second, the presence of two or more respectable inhabitants of the locality. It was, therefore, mandatory for PW2 and PW3 to have a search warrant authorizing them to search a house in question and for PW6 and another respectable neutral person to witness the search and arrest of the accused persons. Accordingly, without a search warrant and the presence of two independent witnesses during the search and arrest, the search into the house number MG/K/SH/962 was conducted illegally hence it is doubtful if the accused was found with exhibit P1.

Before I wrap up this issue, it is necessary to state that from the evidence adduced by prosecution witnesses, it is so apparent that there is a variance between the evidence and the particulars of the information of the first count. According to the first count, it was alleged that the accused persons were found in possession of narcotic drugs, namely heroin weighing 47.792 grams. But, on the other hand, the evidence from PW1, PW2, PW3, PW5, exhibit P1 and P2, indicated that the accused were found with 845 packets of heroin and some unwrapped heroin that was kept in a small transparent plastic bag. I find this variance to be a serious one as it goes to the root of the matter since the prosecution evidence is not supporting the

particulars in the information to establish the offence to the required standard. Additionally, the evidence adduced by the witness regarding the weight of exhibit P1 was unclear, as when PW5 responded to the question during cross-examination, claimed not to remember the weight of unwrapped heroin, and the weight of 845 packets of heroin.

In concluding, I find the prosecution evidence regarding this issue very weak due to the contradiction from their witnesses and the variance concerning what was found from the accused person as stated in the information (charge sheet) and the evidence adduced. Therefore, on that account, the first issue of whether all three accused were found in possession of narcotic drugs, namely heroin weighing 47.792 grams, is answered in the negative.

With the above findings regarding the first issue, the second issue will visibly not stand and hence collapse.

The third and fourth issues are whether house number MG/K/SH/962, located in Kianga, was used for narcotic drugs businesses, and whether the first and third accused were the owner or occupier or persons who oversaw the house number MG/K/SH/962. Apparently, there is no evidence adduced from

the prosecution witnesses to establish if any businesses related to narcotic drugs were conducted in the said house. Similarly, no evidence from the prosecution indicated that the first and third accused were owners, occupiers, or in charge of the house. For those circumstances, therefore, the third and fourth issues are unmeritorious.

To that end, from the evidence adduced and the reasons I have demonstrated herein, I am of the settled mind that the prosecution has failed to prove both counts against all accused persons beyond a reasonable doubt. Consequently, Suleiman Khamis Fikirini, Juma Mtumwa Haji and Issa Seif Suleiman are found not guilty of the offences of being found with possession of narcotic drugs contrary to section 21 (1) (d) of the ZDCEAA, and of being the occupier of premises which is used for drugs offences contrary to section 25 of the ZDCEAA. Accordingly, all accused to be set at their liberty unless held for other lawful cause.

Dated at Tunguu, Zanzibar, this 20th day of June 2023.



G. J. KAZI
JUDGE
20/06/2023