

IN THE SUBORDINATE COURT OF **IPG/017/2017**
THE FIRST CLASS FOR THE LUSAKA
DISTRICT HOLDEN AT LUSAKA
(Criminal Jurisdiction)

THE PEOPLE v BRIAN LEVENI AND GIFT MUBANGA

Before Hon N. C. Simaubi on 5th April 2017

JUDGMENT

For The People : Mrs. G. K. Muhumpu PP

For The Accused : In person

Legislation referred to:

Section 6 and 8 of the Narcotic Drugs and Psychotropic Substances Act, Cap 96

The accused persons stood charged with two counts. In the first count, they were charged with Trafficking in Psychotropic Substances contrary to section 6 of the Narcotic Drugs and Psychotropic Substances Act Cap 96. The particulars alleging that Brian Leveni and Gift Mubanga, on 5th March 2017 at Lusaka in the Lusaka district of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did traffick in psychotropic substances namely, 3.4 grams of marijuana a herbal product of cannabis sativa without lawful authority.

In count two, they were charged with possession of narcotic drugs contrary to section 8 of the Narcotic Drugs and Psychotropic Substances Act cap 96. The particulars alleging that the two accused persons, on 5th March 2017 at Lusaka in the Lusaka





Bwalya identified the marijuana marked P1 and the heroin marked P2.

The accused had no questions for cross-examination.

PW2, Robert Zulu is an Assistant Investigations officer with the DEC. He testified that on 9th March 2017 he reported for duties and was assigned a case to investigate involving Brian Leveni and Gift Mubanga. He explained that the case came from Marapodi Police Post. He was also given some loose vegetable matter suspected to be marijuana and three sachets containing suspected heroin. He told the Court that he took the suspected drugs to the UTH Food and Drug Laboratory for examination by a public analyst. Zulu told the Court that the drugs were found to be 3.5 grams of marijuana and 0.15 grams of heroin. He then visited Kabwata Police Station and interviewed the two suspects in detention where he formally seized the drugs from them. He recorded a warn and caution statement from them but they both denied the charges. He then proceeded to charge them jointly for the two offences. He identified the accused as Gift Mubanga and produced the marijuana marked P1; the heroin-P2; the Notice of Seizure-P3 and the Analysts Affidavits-P4 and P5.

The accused had no questions for cross-examination.

At this point, the accused was found with a case to answer and placed on her defence. She elected to remain silent and called no witnesses. I wish to state that she is perfectly entitled to do so. There is no onus on an accused to speak in her defence or to call witnesses. It follows that I have to decide this case on the evidence adduced by the prosecution. However, this does not absolve me from testing that evidence to satisfy myself as to its truth or falsity nor does it affect the onus on the prosecution to satisfy me beyond all reasonable doubt as to the guilt of the accused person.



As already noted, the only evidence available on record is that of the prosecution. PW1 told the Court that the accused came to the police post with a loaf of bread. On searching this loaf, he found the drugs wrapped in a plastic. The accused then attempted to flee but was soon apprehended and detained. The accused neither challenged this testimony in cross-examination nor did she call any evidence to rebut it. It follows that I must find that the accused is the person that took the said drugs to the police in a loaf of bread to give A1, her husband.

PW2 testified that he took P1 and P2 for testing and hence the reports, P4 and P5 which show that the drugs are indeed heroin weighing 0.15 grams and marijuana weighing ^{3.4}~~4.6~~ grams. I thus find accordingly. These are the same drugs that were seized as per P3, the Notice of Seizure. These drugs are among those prohibited under parts 1 and 2 of the Second Schedule of Cap 96.

COUNT 1: TRAFFICKING IN PSYCHOTROPIC SUBSTANCES

The offence of trafficking in psychotropic substances is established when one is found in possession psychotropic substances in such amounts or quantities as the President may, by statutory instrument, declare to be trafficking for the purposes of this Act. There is no dispute that Mubanga was found with the marijuana that she had concealed in the bread. This marijuana weighs 3.4 grams and Mubanga had no lawful authority to have the said drugs.

VERDICT

I thus find that the case has been proved beyond reasonable doubt. Gift Mubanga is guilty of the offence of trafficking in psychotropic substances contrary to section 6 of the Narcotic Drugs and Psychotropic Substances Act cap 96 and I convict her accordingly.



district of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did possess narcotic drugs, namely, 0.15 grams of heroin without lawful authority.

A1, Brian Leveni pleaded guilty to both counts and was consequently convicted and sentenced. A2, Gift Mubanga pleaded not guilty and is the subject of this judgment.

The burden is upon the prosecution to prove the case beyond all reasonable doubt. There is no burden upon the accused to prove her innocence.

Section 6 of Cap 96 provides as follows:

6 Any person who traffics in a narcotic drug or psychotropic substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding twenty-five years.

Section 3 of the Act defines "psychotropic substance" as meaning any substance in Part II of the Second Schedule. The section further defines "**Trafficking**" as meaning-

- a) *Being involved directly or indirectly in the unlawful buying or selling of narcotic drugs or psychotropic substances and includes the commission of an offence under this Act in circumstances suggesting that the offence was being committed in connection with buying or selling; or*
- b) *Being found in possession of narcotic drugs or psychotropic substances in such amounts or quantities as the President may, by statutory instrument, declare to be trafficking for the purposes of this Act.*

The Narcotic Drugs and Psychotropic Substances (Trafficking) Regulations, Statutory Instrument No. 119 of 1995, has declared 0.50 grams as the minimum amount constituting the offence of trafficking in respect of psychotropic substances. Therefore, in order to prove the guilt of the accused, the prosecution must establish that the accused:

1. Bought, sold or was found in possession of;
2. Marijuana;



3. Without lawful authority.

With regard to the second count, section 8 of Cap 96 provides as follows:

8. Any person who, without lawful authority, has in his possession or under his control any narcotic drug or psychotropic substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding fifteen years.

Section 2 of Cap 96 defines "narcotic drug" as meaning any substance in Part II of the Second Schedule. Heroin is prescribed as such under the Second Schedule. To constitute the offence of possession of narcotic drugs, the amount in question must be less than 0.50 grams in terms of Statutory Instrument No. 119 of 1995.

Therefore, the prosecution must establish that:

1. The accused had in her possession;
2. Narcotic drugs;
3. Without lawful authority.

I will now turn to the evidence on record. The prosecution called two witnesses. The accused elected to remain silent and to call no witnesses.

PW1, Cons Davy Bwalya of Marapodi Police Post testified that he was on duty on 6th March 2017 when a woman whose husband was in custody came to visit. He told the Court that the woman, who brought food for the husband, came around 1800 hrs. He identified the woman as the accused and the husband as Brian Leveni, the now convict. Cons Bwalya testified that upon searching the food which was a loaf of bread, he discovered a plastic inside containing some green and yellowish small stuff in small packs. The accused then ran off but he gave chase and apprehended her. She was then detained in custody. The following day, the Officer-in-charge was informed and he called the Drug Enforcement Agency (DEC). Cons



COUNT 2: POSSESSION OF NARCOTIC DRUGS

A person commits the offence of possession of narcotic drugs when they are found in possession of an amount less than 0.50 grams. In this case, there is no dispute that Mubanga was found with 0.15 grams of heroin concealed in the loaf of bread. She had no lawful excuse to have the said drugs.

VERDICT

The prosecution has proved the case beyond reasonable doubt. Gift Mubanga is guilty of the offence of possession of narcotic drugs contrary to section 8 of the Narcotic Drugs and Psychotropic Substances Act, Cap 96 and I convict her accordingly.

DELIVERED IN OPEN COURT THIS 5TH DAY OF APRIL 2017



HON. N. C. SIMAUBI

MAGISTRATE CLASS 1

