

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 76 OF 2019

TOM MBOYA NJIRI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **Tom Mboya Njiri** was charged with the offence of trafficking in narcotic drugs contrary to Section 4 (a) of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994. He was tried and convicted of the offence and jailed for a term of ten years on 30/8/2016.
2. Particulars are that on 19/4/2016 at Weigh Bridge area, Mariakani Location Kaloleni Sub-County within Kilifi County, he was found trafficking in narcotic drugs by transporting 85 kgs of cannabis sativa with a street value of Kshs. 1 million in a motor vehicle registration number KBB 666P Toyota Caldina in contravention of the said Act.
3. The Petitioner is now in this court for resentencing but he has not laid down the basis for that resentencing. The Petitioner further wants to be released under Community Service Order, but has not laid basis for such release. The prosecution submitted, correctly in my view, that the trial court exercised its discretion to sentence the Petitioner to 10 years, while the law states that he ought to have been jailed for life, and a fine of Kshs. 1,000,000/= in addition. In my view, the Petitioner was extremely lucky. He should not prode fate any further. Because he was sentenced to serve only 10 years, he has the courage to ask to be placed on Community service.
4. Further, this Court does not have the jurisdiction to interfere with the said sentence since the matter does not fall within the ambit of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**.
5. In the circumstances, the Petitioner remains a lucky lad, because if he had appealed a stiffer sentence would have been imposed.
6. The upshot is that the Petition lacks merit. The same is dismissed.

Dated, Signed and Delivered at Mombasa this 26th day of January, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person via video link

Mr. Fedha for DPP

Ms. Peris Court Assistant