



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 95 OF 2020

(CONSOLIDATED WITH PETITION NO. 85 OF 2020)

SWABIR BUKHET.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGEMENT ON RESENTENCING

1. The Petitioner herein **Swabir Bukhet** 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 in Mombasa CM Criminal Case No 1720 of 2014. The facts are that on 20th September 2014 at Mtopanga Estate in Kisauni he trafficked in narcotic drugs by conveying 222kgs of cannabis in a motor vehicle Reg No KBS 496 L TOYOTA PROBOX white in colour with a market value of Kshs 444,000. He was tried and convicted of the offence and jailed for a term of 15 years on 20th June 2017.

2. The Petitioner consequently filed an appeal vide **Mombasa HCCR A. No 100 of 2017** which was dismissed on 20th March 2018 and **Malindi COA.CR.A No 52 of 2018** dismissed on 20th March 2019.

3. The Petitioner having exhausted his appellate chances is now before this court for resentencing. In his written submissions filed on 27th November 2020, the Petitioner stated that he had reformed and fully changed his character having benefited from the rehabilitation programmes at the facility. That he was a devoted Muslim and was a mosque leader at the prison facility and was ready to be initiated back into the community. He further asked for the sentence to be set aside and substituted with a non-custodial sentence or with time already served.

4. The Respondent in the submissions filed on 6th May 2021, submitted that the Petitioner had committed an offence frowned upon by society and public interest demands that a deterrent sentence be made upon him to prevent other would be offenders from committing a similar offence. It was the Respondent's prayer that this court should confirm the sentence meted upon the Petitioner by the trial court.

5. The 2016 **Judiciary of Kenya Sentencing Policy Guidelines** lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

- 1. Retribution: To punish the offender for his/her criminal conduct in a just manner.**
- 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.**
- 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.**
- 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.**
- 5. Community protection: To protect the community by incapacitating the offender.**
- 6. Denunciation: To communicate the community's condemnation of the criminal conduct.”**

6. It is this court's view that the Petitioner's sentence was in fact very lenient. Section 4 of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994 provides the following under the penalty section:

Penalty for trafficking in narcotic drugs, etc.

Any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable—

(a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or

(b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.

7. The trial court exercised its discretion in sentencing the Petitioner to 15 years, while the law states that he ought to have been jailed for life, and a fine of Kshs. 1,000,000/=. A medical examination on the petitioner was carried out as ordered by this court on 6th May 2021. From the report forwarded by SP Charo Sumuni in charge Shimo La Tewa Prison, the Petitioner is not suffering from any serious ailment that would warrant the same being a serious mitigating factor to be considered by this court.

8. Issues relating to drug and substance abuse have in the recent times proved to be a huge menace with regard to the effect on the physiological, social and economic functioning of the coast region community. In a bid to implement the law set in place to curb this huge problem, this Court in meting out sentences must observe the seriousness of the offence and balance the same with measures to prevent and reduce future occurrence of such offences. The court is guided by the findings in a New Zealand decision in **R v AEM [2000]** as cited in **Nicholas Mukila Ndeti v Republic [2019] eKLR** where it was decided that:

“... One of the main purposes of punishment...Is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that if they yield them, they will meet this punishment.”

9. 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**.

10. The upshot is that the petition before the Court lacks merit and is herewith dismissed. The Petitioner shall fully serve the 15 years imposed on him by the trial court.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JUNE, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Mr. Fedha for State

Ms. Peris Court Assistant