

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION E051 OF 2021

PAUL BARASA OLUOCH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Ukwala SRMCRC 578

of 2020 on 25.01.2020 by Hon. C.I. Agutu – Senior Resident Magistrate)

RULING

1. The Applicant is **Paul Barasa Oluoch**. He is aged 31 years old. He was charged with **Trafficking of Narcotic Drugs contrary to Section 4(a) of the Narcotic drugs and Psychotropic substances Control Act No. 4 of 1994**. The offence occurred on 29.10.2020 along Busia – Kisumu Highway at Ugambe village, Segu Sub-Location in Ugenya Sub-County within Siaya County. The quantity of the trafficked substance was 17 brooms of cannabis sativa (bhang) of street value of KShs.1700 on a motor cycle Registration No. KMEX 544H make Bajaj Boxer.

2. The accused took plea on 2.11.2020 before Hon. C.I. Agutu, SRM and the Accused pleaded guilty to the charge as read to him in Kiswahili. The trial court record shows that he said “**It is true.**” The facts were read to him on 25.11.2020 and the language not indicated but the court recorded production of exhibits – bhang, bag and report of Government Analyst and motorbike. Accused: Facts are true” and a plea of guilty was entered.

3. After the Prosecution Counsel stated that there were no records, the court asked for mitigation. The accused mitigated and was sentenced to one year imprisonment. The trial Magistrate also noted that exhibit will be destroyed after lapse of appeal period. She however never indicated which exhibit was to be destroyed since there was a motor bike involved and whether it was to be destroyed is not indicated. Having considered all the above, I find that the plea was not unequivocal. There was also no conviction of the accused.

4. The sentence he is serving is not supported or grounded. Proceedings of 2.11.2020 and 25.11.2020 by Hon. C.I. Agutu Senior Resident Magistrate are hereby quashed and sentence imposed set aside.

5. Unless otherwise lawfully held, the Paul Barasa Oluoch is hereby set at liberty forthwith.

6. File closed.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 24TH DAY OF JUNE, 2021

R.E. ABURILI

JUDGE