



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC CR MISC NO. 189 OF 2017

PAUL MWOVA MUTUNGI APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGMENT

INTRODUCTION

1. The Appellant was charged with offence of trafficking in Narcotic drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994.
2. Particulars being that on 16th August, 2016 at Kakuswi Village, Kiteta Location, Mbooni East District within Makueni County, PAUL MWOVA MUTUNGI was found trafficking bhang one sack to wit 18 Kilograms with a street value of Kshs.72,000/= which was not medically prepared.
3. The Appellant pleaded not guilty and matter went into a full trial. The Appellant was convicted and sentenced to serve 7 years imprisonment. He lodged instant matter which he calls a criminal revision containing mitigation thus seeking the sentence to be varied.

APPELLANT SUBMISSIONS

4. The Appellant prays for leniency for the offence he was accused of.
5. He was deeply remorseful and repentant for the act he did which was painful experience for him and his family.
6. And in as much he is suffering behind bars the most affected is his family. He admitted that he was hustling to search for food for his children and also educate them.
7. The Appellant is from disadvantaged background in that he was brought up in a single parent family, experiencing under painful events hence used to struggle to take care of his mother and his family.
8. The Appellant further pleads he never went to school, working hard to make sure his children eat and get educated. He had improved his behavior since he comes to prison through psychological guidance and counseling process, through joining the prison rehabilitation section of industry with grade III in wood carving thus putting him into a better position to understand his potential.
9. That during Sundays the Appellant always attend church service for spiritual nourishment and also attending bible group discussion. With the work skill and the experience he had gained, he is capable of organizing the youth and train them on how to become responsible members in the society.
10. If granted the second chance, he will be in a better position to make good use of his skills gained from prison and also give guidance and counseling services to both young and old people helping them to manage their stress hence have positive attitudes in challenging moments in life.
11. The Appellant prays for a lesser term or to a non-custodial sentence or easier interaction with the youth early to put the plan in order and help them to start establishing a worthwhile family hence helps to reduce the rate of crime and also to building country's economy.
12. Since the Appellant is the first offender and the sole bread winner of his family, he request this Honourable Court to allow him serve his sentences concurrently and that having served a custodial sentence for some time, the court to grant him a non-custodial sentence.

13. The Appellant believes that judiciary (court) is not only meant to convict but also to promote justice and reconciliation between the parties, hence prays for this Honourable court to consider his request for leniency and promise to abide by any other orders that the court may deem fit in his circumstances.

RESPONDENT SUBMISSIONS

14. The appeal is on sentence only. The offence was under Section 4A of Narcotic Drugs and Psychotropic Substance Control Act. Penalty is 1 million or 3 times the market value of drugs and addition imprisonment for life.

15. The Appellant was only sentenced to 7 years. The same is very lenient and within the law. Trial court found him to be a repeated offender. He had been convicted of similar offence. The Appellate court to reject appeal. Same be dismissed and trial court conviction and sentence be upheld.

16. The trial court took into account all mitigations during conviction.

DETERMINATION

The power of revision

17. Sections 362 and 364 of the Criminal Procedure Code provide as follows:

“Power of High Court to call for records;

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

.

18. **Powers of High Court on revision**

1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) In the case of any other order other than an order of acquittal, alter or reverse the order.

See also Wesley Kiptui Rutto & another v Republic [2017] eKLR

19. In the instant matter, the applicant moves court by what he interchangeably calling appeal or revision. He complains of the sentence meted out to him and prays for a lesser term or to a non-custodial sentence.

20. In his submissions, he narrates what he calls reform he has under gone in prison thus seeking the court to review the sentence.

21. The prosecution has responded that, the offence was under Section 4A of Narcotic Drugs and Psychotropic Substance Control Act. Penalty is 1 million or 3 times the market value of drugs and addition imprisonment for life.

22. The Applicant was only sentenced to 7 years. The same is very lenient and within the law. Trial court found him to be a repeated offender. He had been convicted of similar offence.

23. Under provisions cited above on revision, the High court calls lower court record for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

24. The applicant has no shown nor has court detected or noted any error, illegality, or impropriety on sentence passed by the trial court. The applicant was very lucky that he was never sentenced to life imprisonment.

25. This court finds that the sentence was within the law and thus cannot be disturbed.

26. Thus the court no merit in same application and dismisses the same.

SIGNED, DATED AND DELIVERED THIS 30TH DAY OF JANUARY, 2019 IN OPEN COURT.

.....

HON. C. KARIUKI

JUDGE