



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL APPEAL NO. 04 OF 2017

AMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION OF SENTENCE

1. This is a case in which the appellant, AMA (“Abdurlahman”) was charged with the offence of being in possession of narcotic drugs contrary to section 3(1) as read with section 3(2) (a) of the Narcotic Drugs and Psychotropic Substances Control Act (NPSA)No. 4 of 1994. The particulars of the charge were that on 27th September 2016 at 7:03pm at Gaden area in Langoni Location in Lamu West Sub-County within Lamu County, he was found in possession of narcotic drugs namely cannabis to wit 17 grams with estimated market value of Kshs. 300/= which was not meant for medical purposes in contravention of the said Act. When the appeal came up for hearing before Ongeri J, the appellant abandoned his grounds of appeal and only sought revision of sentence.
2. The appeal was first heard by Ongeri J whom after hearing submissions of Mr. Kasyoka counsel for the respondent on 22/2/2018 ordered that a probation officer’s report be filed in court. In his submissions, Mr. Kasyoka had stated that the sentence meted by the trial court was excessive. He also submitted that the appellant was 17 years of age.
3. The probation report was presented to court on 24/7/2018. In presenting the report, probation officer Mr. Mwaniki submitted that the Omari project a Non – Governmental Rehabilitation Centre had assessed the appellant and was willing to aid in his rehabilitation if placed on probationary sentence. The probation report noted that the appellant appeared mentally confused and incoherent and would benefit from mental treatment and drug therapy from the Malindi General Hospital, the MAT Clinic and Omari Rehabilitation outreach. The family background according to the report is that two of his siblings were currently serving prison sentences for drug related offences and that at the time of arrest the convict was living like a vagabond and had a care free lifestyle.
4. I have considered the respondent’s submissions and the probation report. The appellant was convicted under section 3 (2) (a) of the NPSA which provides a mandatory sentence. In meting out this sentence however the trial court lamented that part V of the Narcotic Drugs and Psychotropic Substances Control Act which provides for rehabilitation of an offender adjudged to be an addict had not been operationalized despite there being a dire need. I couldn’t agree more with the learned magistrate’s observation and call to action of the state to provide rehabilitation facilities envisaged under part V of the Act.
5. Having looked at the probation report and in particular the observation that the offender was an addict deserving of mental treatment and rehabilitation, I exercise the power donated to me under section 364 of the Criminal Procedure Code and substitute the 10 year imprisonment term with a probation term of 3 years to be served under the strict supervision of the probation office.
6. In addition the offender shall undergo the relevant treatment and psycho-social rehabilitation at the Omari rehabilitation outreach. The probation officer shall file a report of such on ongoing treatment within 60 days of this order.

Orders accordingly.

Ruling dated, signed and delivered at Garsen this 22nd day of May, 2019.

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R. LAGAT KORIR
JUDGE

In the presence of

The Appellant

Mr. Kasyoka for the Respondent

Mr. Mwaniki Probation officer

Ms. Pacho Court Assistant