

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPL. NO.297 OF 2019

ISIMBI JESSICA1ST APPLICANT

KATSONGERI POPY BAOSALANGE.....2ND APPLICANT

CHANTAL FIKIRI.....3RD APPLICANT

MAKALIKALI JEANNOT MUHINDO.....4TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicants, Congolese and Rwandese nationals, were charged with four counts of **unlawful importation of Part One (1) Poison without an import permit** contrary to **Rule 3(1)** of the **Pharmacy and Poison Rules** as read with **Section 51** of the **Pharmacy and Poisons Act** as amended by the Kenya Gazette Supplement of June 2012. The particulars of the offence were that on 5th May 2018 at Jomo Kenyatta International Airport Terminal 1A Arrivals within the County of Nairobi, they were found having imported 16 packets of drugs weighing 362.75 kilograms without an import permit. When the Applicants were arraigned before the trial magistrate's court, they pleaded guilty to the charge. They were convicted on their own plea of guilty. They were sentenced to each pay a fine of Kshs.700,000/- or in default serve one (1) year imprisonment. Upon completion of their sentences, they were ordered repatriated to their countries of origin. The court further ordered that the drugs imported should be forfeited to the State for the purposes of destruction by a way of incineration under the supervision of the court. The Applicants have already served sentence and have been repatriated.

The Applicants were aggrieved by the part of the sentence that ordered the forfeited drugs be destroyed by incineration. They filed an application before this court seeking the review of that decision. In particular, the Applicants want the order made for the forfeiture and destruction of the drugs be set aside. Their reason for making this request was on the basis that the drugs that were forfeited were fit for human use. The only reason why they were forfeited to the State was because the drugs had not been registered with the Pharmacy and Poisons Board. The Applicants explained that they had already made an application before the Poisons Board for the registration of the drugs. At the time of forfeiture, the registration was under process. It was in that regard that the Applicants were of the view that the order that drugs be forfeited and destroyed was draconian and a waste of valuable resources and should be set aside. Instead, the Applicants asked the court to direct that the drugs be donated to the County Government of Kisumu.

The State was opposed to the application. In essence, it was the State's case that once a drug was imported into the country without the same having been approved by the Pharmacy and Poisons Board in accordance with the law, then the only order that can ensue after forfeiture is for the destruction of the drugs. The State took issue with the thrust of the Applicants' application which essentially implied that drugs can be imported into this country without authorization and then allowed to be used in the country for charitable purposes. The State was of the view that such implication would render the registration and approval process of drugs to be otiose. The State urged the court to dismiss the application.

This court has carefully considered the application and the grounds put forward by the Applicants in support of the application. It has also considered the rival submission made by the parties to this application. The issue for determination by this court is whether the Applicants made a case for this court to revise the decision of the trial court in directing that the forfeited drugs be destroyed. In making the order, the trial court relied on **Section 51** of the **Pharmacy and Poisons Act** which provides as follows:

“Any person guilty of an offence under the Provisions of this Act shall except as otherwise provided, be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment, and in addition to any penalty imposed under this Act, the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited.”

This court cannot fault the verdict that the trial court reached. The only order that the court could have made in relation to the drugs that were illegally imported to the country was for the same to be forfeited to the State and thereafter be destroyed. The Applicants' application for the drugs to be released to a public hospital is not only misguided but would be a back door way in which drugs that have not been approved will be allowed into the Kenya market. It was clear to the court that the Applicants' desire seemed to be that the drugs that they had imported without authority or licence should be allowed into the Kenyan market under any circumstances including under the guise that the same was being offered for charitable purposes. That cannot be. Once the Applicants were convicted of importing the drugs without a licence, or authority from the Pharmacy and Poisons Board, the only logical order that could have issued was for the said imported drugs to be forfeited to the State and the same be thereafter destroyed.

For the above reasons, this court finds no merit with the Applicants' application. The same is dismissed. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2019

L. KIMARU

JUDGE