



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MOMBASA -1- HCRA NO.100 OF 2017**

**SWABIR BUKHET LABHED.....APPELLANT**

**REPUBLIC.....RESPONDENT**

*(An appeal from the conviction and sentence of Hon. J. Nangea (CM) at Mombasa Law Courts on 29/06/2017)*

**JUDGMENT**

1. The Appellant was convicted with the offence of trafficking in Narcotic

Drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic substances Control Act No. 4 of 1994 and sentenced to 15 years imprisonment and in addition to a fine of Ksh. 200, 000 and in default to serve one year imprisonment.

2. The particulars of the charge were that on 20/09/2014 at Mtopanga Estate in Kisauni Mombasa, the Appellant jointly with another, not before court trafficked in Narcotic Drugs by conveying 222 kilograms of Cannabis in a motor vehicle Reg. No. KBS 496L Toyota Probox white in color with a market value of Ksh. 444,000 in contravention of the said Act.

3. The Appellant was charged with a second count of giving false information to a person employed in Public Service as contrary to Section 129(b) in that on the same material particulars as in court 1 (above), the Appellant gave false information to a police officer No. 86347 P.O ELIUD KEINO that he had been robbed of the motor vehicle Probox Reg. NO. KBS 496L at around 23:40 hours while at Kenol, Nyali, petrol station.

4. The court acquitted the Appellant on the Second count on the grounds that the charge was defective for failure to indicate the law under which it was brought.

5. The evidence in this case in summary was that on 18/09/2014 ,the Appellant leased the motor vehicle in question Toyota Probox Reg. No. KBS 496L from PW4.

6. On 20/9/2014 at 4.30 am, the police challenged the said vehicle at Bamburi area, when they saw it moving in a zigzag manner and signaled it to stop.

7. The driver refused to stop and the police gave chase and caught up with the vehicle at Mtopanga village after it reached a dead end .Three people escaped from the motor vehicle into the village and upon inspecting the vehicle, police found 5 bags of plant material suspected to be Cannabis sativa. The ID and driver's license of the Appellant were also recovered from the vehicle.

8. The plant material was taken to the Government analyst who produced a report confirming it was Cannabis sativa. The plant material was weighed and certificate of weighing was produced as an exhibit. It was subsequently destroyed and the vehicle released to PW4.

9. The Appellant said he hired the vehicle in question to transport his brother in-law who was travelling abroad to Mombasa Airport. After dropping him at the Airport, he drove his wife and children to their home in Kilifi.

He said on his way back at 4 a.m. he was knocked by a vehicle from the rear and 3 occupants from the offending vehicle beat him up and he became unconscious. Upon gaining consciousness he went to Nyali P/S and reported the incident but police turned against him and arrested him and charged him with the two charges. He said he was shown the Cannabis saliva at Bamburi police station.

10. The trial magistrate found the Appellant guilty as charged on the first count and sentenced him to 15 years imprisonment and in addition, to a fine of Ksh. 200,000 in default one year in jail.

The Appellant has now appealed against both conviction and sentence on the following grounds;

**(i) That the prosecution did not prove its' case beyond reasonable doubt.**

**(ii) That the evidence on record was not only manifestly insufficient but it was inconsistent and it had glaring contradictions and was incapable of sustaining a conviction.**

**(iii) That the trial court did not consider the defense by the Appellant.**

11. The Appellant's counsel submitted in writing as follows;

(i) That there was no evidence that the Appellant was in the motor vehicle when police flagged the driver to stop.

(ii) That none of the prosecution witnesses identified the Appellant.

(iii) That the evidence that the vehicle was robbed from the Appellant was valid and that is why the Appellant was acquitted on court 2.

(iv) That the charge is defective in that the prosecution failed to produce a certificate of the value of the Narcotic drugs by a person certified to be an officer gazzetted in Kenya Gazette.

12. Opposing the Appeal ,the Respondent submitted as follows;

(i) That the vehicle in which Cannabis saliva was recovered was hired by the Appellant from pw4 who produced a lease agreement and an Mpesa pay statement showing the Appellant paid for it.

(ii) The police produced an inventory and weight certificate showing the cannabis was weighed and a certificate produced.

(iii) That the Appellants' documents were found in the motor vehicle which confirmed the Appellant had hired the motor vehicle.

(iv) The Respondent submitted that the Appellant's defence was considered and that the Appellant tried to mislead the court that he was robbed of the vehicle, but the lease agreement showed he said he was going to move houses but he told the court that he was using the vehicle to transport his brother —in-law who was travelling out of the country.

13. I have carefully considered this rival submissions herein, my findings are as follows;

(i) Although the trial court relied on circumstantial evidence, in same is water tight.

(ii) It is the Appellant who hired the vehicle from pw4 and his documents were in the vehicle and the Cannabis sativa was recovered in he said motor vehicle.

(iii) The defense evidence was considered by the trial court and found to be wanting.

(iv) I find conviction here in is safe and the sentence lawful.

(v) I accordingly dismiss the Appeal and uphold both the conviction and sentence.

**Dated, Signed and Delivered in Mombasa this 20th day of March 2018.**

**ASENATH ONGERI**

**JUDGE.**