



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC MISC APPL. NO. 223 OF 2017

BLASTUS ORORI OLWAL.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Appellant was charged with offence of possession of Narcotic (Bhang) drugs contrary to Section 2(1) as read with Section 3(1) (2) of Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994.
2. Particulars being that on 27/03/2014 at Wote Township Kunda Kindu Estate, Makueni District within Makueni County, the Appellant was found in possession of narcotic drugs (Bhang) to wit 8 kgs which was not in form of medical preparation valued at Kshs. 8,000/=.
3. He pleaded not guilty and the matter proceeded for trial whereof he was convicted and sentenced to 3 years imprisonment.
4. He lodged a petition of appeal and principally complained of the sentence as being excessive and the fact that he was not given an option of fine.
5. The matter came for hearing and he urged court to release him as he is sickly and requires treatment in Kenyatta hospital as he has ailing stomach and prostate problem.
6. He is 61 years and has served 2½ years and has a balance of 5½ months remaining. He says he has learnt a lesson and he has reformed.
7. The appeal was opposed by Ms Ndenda, state counsel on the grounds that when the appellant was being sentenced, he never mitigated despite being accorded an opportunity to do so.
8. The court has noted and taken the circumstances herein into account. The Appellant has served about 2½ years and has a balance of about 5½ months to go.
9. Further he has previous convictions of the similar offences.
10. The Appellant does not impugn the conviction and he dwells on his agreement on the span of the sentence.
11. I have perused the record and found that the Appellant was arrested on allegation of theft of a mobile phone, and that is when the officers decided to go and search his house whereof they claim to have stamped on plant materials which was suspected to be bhang.
12. The same was forwarded to the government chemist to ascertain whether it was bhang. The report on record indicates that only 90 grams of plant material was forwarded to the government chemist. The remaining 7kgs and 910 grams is not stated of its whereabouts.
13. The same was not produced as an exhibit. The government chemist was not called as a witness nor base of producing same report in his absence.
14. The Appellant was unrepresented. The recovered bhang was not produced as an exhibit and no explanation has been tendered for the omission.
15. The court cannot assume that the police could not fabricate the charges against accused after failing in their mission of recovering the allegedly stolen phones.

16. The court completely ignored that aspect raised by the appellant in his defence.

17. However since the accused complaint is a sentence, I look at mitigating factors though the prosecution case was the worst of its kind.

18. The Appellant has raised matters of health and denial of remission. He is 61 years and serving the remaining 5½ months courtesy of a bogus conviction.

19. The 2 previous convictions are GC 48/09 possession of game trophy without a certificate of ownership contrary to 42(i) wildlife Conservation and Management Act 376 Laws of Kenya and GC 614/2010 being in possession of narcotic drugs. He was suitable for non-custodial sentence safe for those 2 convictions.

20. However having observed that the conviction in the first place was un-deserving and taking into account the entire circumstance of the case, I order that:-

1. The sentence is reduced to the period already served.

2. The Appellant shall be released forthwith unless otherwise legally held.

SIGNED DATED AND DELIVERED THIS 19TH DAY OF APRIL 2018 IN OPEN COURT.

C. KARIUKI

JUDGE

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