

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 245 OF 2011

ADEN ALI ABUDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application herein is for revision of sentence. The Applicant was charged with trafficking narcotic drugs contrary to **Section 4(a) of Narcotic Drugs and Psychotropic Substances Act No. 4 of 1994**. The particulars of the offence were that on 4th January, 2011 at Ziwani Estate in Nairobi, within Nairobi Area was found trafficking drugs by selling 420 grams of Cannabis Sativa (bhang) of street value Kshs. 420/= in contravention of the said Act. The Applicant was convicted on his own plea of guilty and was sentenced to pay a fine of 1 million in default serve 7 years imprisonment. His plea to this court is that he was remorseful and for the period he has been in prison, he has learnt the purpose of not disobeying the law. He was sentenced on 12th April, 2011 which means that by now he has served 6 years in prison.

Under **Section 4(a) of the Narcotic Drugs and Psychotropic Substances Act No. 4 of 1994:**

“any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable-

(a) In respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drugs or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life.”

In this respect, the learned trial magistrate ought to have fined the Appellant Kshs. 1 million or three times the value of the drugs which is a total of Kshs. 1,260/= and in addition to life imprisonment. Suffice it to state, where a fine is imposed a default custodial sentence ought to follow pursuant to Section 28(2) of the Penal Code. This was not adhered to. Be that as it, it trite that a trial court has discretion in imposing a sentence, but which discretion must be exercised judiciously on a case to case basis. Although life imprisonment was not imposed, it is my view that it was in any event not warranted given the value of the drug. In the same spirit, my view is that the fine of Kshs. 1 million was also unwarranted because the value of the drug was quite small. I hold and find that the learned magistrate did not in the circumstances properly exercise his discretion in sentencing. The sentence imposed was obviously harsh and excessive.

The upshot of my observation is that the application must succeed. I set aside the remainder of the sentence and substitute it with an order that the appellant has served sufficient sentence and is hereby forthwith set free unless otherwise lawfully held.

DATED and DELIVERED this 24th day of May, 2017

G.W. NGENYE-MACHARIA

JUDGE

In the present of

1. *Applicant in person.*

2. *Miss Kimiri for the Respondent.*