



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL APPEAL NO. 56 OF 2015

NADIA JUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 722 of 2015 of the Chief Magistrate's Court at Malindi – N. Shiundu, Ag. SPM)

JUDGEMENT

The appellant with two other accused were charged with several counts of being in possession of narcotic drugs contrary to section 3 (1) and 2 of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994. The appellant was charged under Count V whose particulars were that on 23rd October 2012 at around 23.40 hours at Maweni area in Malindi District within Kilifi County, the appellant was found in possession of narcotic drugs namely heroin to wit one small satchet with street value of Kshs.100/= in contravention of the said Act.

The appellant pleaded guilty and was sentenced to serve five (5) years imprisonment. The grounds of appeal are that she is a single mother of two children aged two and five years respectively, that her mother, who is a widow is aged and sickly and she has two other siblings to take care of. During the hearing of the appeal, the appellant only pleaded for leniency as she has two children. She told the court that she has now reformed.

Mr. Fedha, prosecuting counsel, opposed the appeal. Counsel submitted that the appellant was rightly convicted and sentenced. The charges were read over to the accused and she pleaded guilty.

I have gone through the record of the trial court. It is established that the appellant and her two co-accused faced five counts before the trial court. The 1st accused, RAMA SHIKUKU MUKAVANA was charged in counts I, II and III. The 2nd accused, MOHAMED MUSA SHALI was charged under count IV. The appellant was charged under count V. Initially, the appellant and her co-accused pleaded guilty. They later changed their plea. On 21st November 2012, the appellant's co-accused pleaded guilty and were sentenced to six (6) years imprisonment.

On 29th November 2013, the appellant asked the court to have the charges read over again. The record shows that three counts were read over to the appellant, namely, count I, II and III. The appellant

pleaded guilty to the three counts. The prosecutor read over the facts as follows:-

Prosecutor: On 23rd October 2015 at around 11.45 pm. Police officers were on patrol in Maweni when they met 3 people including the accused. They stopped and conducted a search on them. From the 1st accused they found 5 tablets of Rolyplinal, 3 satchets of heroin and 10 grams of bhang.

They were taken to Malindi police station and the exhibits taken to the Government analyst.

The appellant confirmed that the facts were correct. She was sentenced to five years imprisonment for each count. The sentence is to run concurrently. It is clear that the appellant did not plead to the correct charge. The facts as read by the prosecutor refer to the first accused who had already pleaded guilty. The appellant only faced one count. I will take it that the appellant pleaded guilty to count V as opposed to the three other counts. The record shows that at all times the charges were read, only count V related to the appellant.

The appellant was convicted on 29th November 2013. She was arrested on 23rd October 2012. She remained in custody all along despite having been granted a Kshs.50,000/= surety bond. She has now served over two and half years in prison excluding the remand period of over one year. I do find that this is enough punishment.

The appellant is contesting the sentence and not the conviction. I hold that she was properly convicted in relation to count V. I do however hold that the sentence is excessive in the circumstances. The five year imprisonment for the three counts is set aside. The appellant is found guilty of count V only. The appellant is sentenced to the period already served. She shall be set at liberty unless otherwise lawfully held.

Dated and delivered in Malindi this 28th day of July, 2016.

S.J. CHITEMBWE

JUDGE