

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL APPEAL NO. 61 OF 2012

SAID ATHMAN HAMISI 1ST APPELLANT

RAJAB MOHAMED MSOZA 2ND APPELLANT

FLORENCE KAMENE MTALA 3RD APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 757 of 2011 of the Chief Magistrate's Court at Malindi – G. Sagero, RM)

JUDGEMENT

The three appellants were charged with the offence of being in possession of narcotic drugs contrary to section 3 (1) and 3 (2) (b) of the Narcotic Drugs and Psychotropic Substances Act No. 4 of 1994. The particulars of the offence were that the appellants, on the 17th November 2011 at about 9.00 pm at Majengo Mapya Area in Malindi District within Kilifi County, were jointly found in possession of a narcotic drug to wit 4 satchets of heroin with a street value of Kshs.400/= in contravention of the said Act.

The appellants pleaded guilty to the charge and were each sentenced to serve ten (10) years imprisonment. They all filed similar grounds of appeal which are that the plea was equivocal, that the charges were not properly explained to them. That they are laymen and illiterate and were not conversant with the court process. That they did not know the consequences of pleading guilty.

During the hearing of the appeal the appellants informed the court that they are now reformed and have been in custody for a long time. They pleaded for leniency. The 3rd appellant told the court that she has two children.

Mr. Fedha, prosecution counsel, opposed the appeal. Counsel stated that the charges were correctly read to the appellants on 18th November, 2011 and they pleaded guilty. The facts were read on 9th December, 2011 and they also pleaded guilty to the facts. The plea was properly taken. Mr. Fedha concedes that the appellants have been in custody for quite some time.

The record of the trial court show that the plea was taken on 18th November, 2011. The appellants pleaded guilty to the charge. The prosecution informed the court that the facts of the case were not ready as the exhibits had been taken to the government analyst for examination. The matter was adjourned to 2nd December, 2011. Once again the report from the government analyst had not been received and the matter was adjourned to 9th December, 2011. On that date the facts of the case were read to the appellants and they confirmed that the facts were true. The trial court proceeded and convicted them on their respective guilty plea. It is therefore clear that the appellants had almost three weeks to reflect on their plea. They maintained that they were guilty and cannot alledge that the plea was equivocal. I do find that the plea was properly taken and the conviction is proper.

With regard to the issue of sentence, the charge involved narcotic drugs (heroin) with a street value of Kshs.400/=. The appellants were sentence to serve ten (10) years imprisonment without the option of a fine. The sentence is quite hash given the value of the drugs. The appellants were arrested on the 7th November, 2011 and have been in custody since that time. They have served almost five years in prison. I do find that to be enough punishment. The sentence of ten (10) years imprisonment imposed by the trial court is hereby sent aside and replaced with the period already served. The appellants shall be set at liberty unless otherwise lawfully held.

Dated and delivered in Malindi this 18th day of August, 2016.

S.J. CHITEMBWE

JUDGE