

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 15 OF 2016

LAWRENCE RUTERE MURIUKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in CR. 1013/16 at Embu Chief Magistrate's Court by Hon. V.O. Nyakundi - RM on 14th March, 2016)

JUDGEMENT

1. The appellant has appealed against his conviction and sentence of 5 years imprisonment in respect of the offence of being found trafficking in narcotic drugs (cannabis sativa) which was imposed upon him by the court of the Resident Magistrate on 14th March 2016. When his appeal came for hearing on 20th September 2016, he abandoned his grounds against the conviction and decided to argue his appeal against the sentence only.

2. In sentencing the appellant, the trial court rightly took into account that this was a very serious offence. It also rightly took into account that the appellant was a physically challenged person. I noted that the appellant was physically challenged to the extent that he was being brought into and taken out of the court room by being carried by other persons. It then proceeded to find that *“most people charged in court these days bear the effects of drug consumption. If I award a non-custodial sentence, the accused would confirm his belief that he is immune from prosecution because of his physical infirmities and in the process he would resume his trade of selling drugs to the youth and school children society too would mistakenly believe that physically challenged person are immune from prosecution.”*

3. I find that the trial court erred in law in finding that *“most people charged in court these days bear the effects of drug consumption.”* This issue was not raised by the prosecutor. It is an extraneous matter which unduly influenced the trial court. I further find that the trial court erred in law in failing to take into account that the appellant was a first offender before sentencing him. According to ***Wanjema v R (1971) EA 493*** an appeal court is entitled to interfere with the sentence imposed by the trial court if that court misdirected itself in the sentencing process. The sentence of 5 years imprisonment was imposed upon the appellant due to the above misdirections.

4. In the light of the foregoing matters and also bearing in mind that the appellant was a first offender and due to those misdirections, I hereby reduce the sentence imposed to the period that the appellant has already served.

5. The appellant is hereby ordered released unless otherwise held on other lawful warrants.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this **21st** day **SEPTEMBER, 2016**

In the presence of both the appellant and Ms Mbae for the respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

21.09.16