



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 191 OF 2012

ALI JUMA SAIDAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 1784 of 2010 of the Chief Magistrate's Court at Mombasa – Hon. Mutende - SPM)

JUDGMENT

ALI JUMA SAID hereinafter referred to as the Appellant was Convicted and Sentenced to sixteen (16) years imprisonment for the offence of trafficking Narcotic drugs contrary to Section 4(a) of the Narcotic drugs and psychotropic substances Act Number 4 of 1994.

The particulars being that:-

“On the 12th day of June, 2010 at Mbaraki area in Mombasa County he was found trafficking in Narcotic drugs by conveying 96 packets of Heroin with a street value of Ksh. 28,800/= in contravention of the said Act”.

PW 1 PC GODFREY MATHENGE and **PW 2 PC MICHAEL MUSI** were in the company of **PW 4** Chief Inspector **NJERU** when acting on information received they proceeded to Doho market where they found the Accused standing outside alone. He was searched by the **PW 4** and they recovered 96 satchets wrapped in a Newspaper from his rear right trouser pocket. He was arrested and taken to police station.

The appellant was Convicted for the offence of trafficking in Narcotic drugs contrary to Section 4(a) of the Narcotic drugs and Psychotropic substances Control Act.

Section 2 of the Act defines trafficking to mean,

“the importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, delivery or distribution by any person of a Narcotic drug or Psychotropic substance or any substance represented or held out by such person to be a narcotic drug or psychotropic substance or making of any offer in respect thereof”.

In the present case the particulars of the charge indicate that the trafficking was by way of **“Conveying”**.

In her Judgment the learned trial magistrate was of the view that conveying means carrying as per the oxford dictionary. That may be so but it denotes carrying from one place to another and involves the element of transportation.

From the evidence of the arresting officers the appellant was found standing outside Doha market. The satchets were removed from his trouser pocket.

He was not found transporting the satchets to another place but he was found in possession of the same. He ought therefore not to have been charged with trafficking but to have been charged with being in possession of Narcotic drugs contrary to Section 3 of the Act. He is found guilty of the lesser offence.

The fine of Ksh. 86,400/= or one year imprisonment and the additional Sentence of fifteen (15) years is substituted with a Sentence of seven (7) years Imprisonment.

The appellant will serve an imprisonment term of seven (7) years from the time of Conviction.

To that extend only does the appeal succeed.

Judgment delivered dated and signed this **29th** day of **May, 2014**.

.....

M. MUYA

JUDGE

29TH MAY, 2014

In the presence of:-

Learned State Counsel Kiprop

Learned Counsel for the appellant absent

Court clerk Musundi