



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 250 of 2010

PETER LEBANGUTI MULEVUMIAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 2893 of 2009 of the Chief Magistrate's Court at Mombasa – T. Ole Tanchu (SRM))

JUDGMENT

The Appellant was sentenced to 15 years imprisonment for the offence of trafficking in Narcotic Drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994.

The particulars of the charge are that on the 2nd day of September 2009 at Mariakani Weighbridge in Kilifi District within the Coast Province trafficked in Narcotic Drugs by transporting 21kgs of Cannabis Sativa with a market value of Kshs. 42,000/- in a motor vehicle Registration NO. KBH 028C in contravention of the said Act.

On the 2nd day of September 2009 the Appellant boarded a bus Registration No. KBH 028C and sat at seat No. 9. At Mariakani Weighbridge the bus was stopped by Anti Narcotics Police Officers and upon search some 21kgs of Cannabis Sativa were recovered.

The contention by the Appellant is that he boarded the bus at Voi but not Taveta. Further that after boarding it he did not sit as there was shortage of seats. He only sat when a seat was made available by a passenger – who was alighting. That he was surprised some two bags whom every passenger denied ownership belonged to him.

In his judgement the trial Magistrate observed at page 14 line 24 that-

“The direct evidence linking the Accused to the bags is that of PW2, the conductor who categorically stated that when the Accused came to the stage at Taveta with the two bags, Accused refused the bags to be put in the boot. He requested that he enters the bus with the same. PW2 therefore had occasion to see and identify the Accused at that time.”

I find no reason to fault the finding of the trial Magistrate who had the opportunity to observe the demeanour of the witnesses who testified before him. The Officers who arrested the Appellant found the bag containing the Cannabis Sativa under the seat which the Appellant was seated.

The trial Magistrate was further satisfied that the Accused/Appellant was transporting the drugs from Taveta to Mombasa. The Appellant was convicted of the offence of Trafficking in Narcotic Drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 2004.

Trafficking in the Act is shown to mean 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 Substance or making of any offer in respect thereof.

In the present case the Appellant is alleged to have “**transported**”. Transportation can fall under “**conveyance**”. Conveyance is part and parcel of transportation. Conveyance in the Act is defined as-

“a means of conveyance of any description used for the carriage of persons or goods and includes any aircraft, vehicle or vessel.”

Conveyance and transportation therefore are intertwined.

In the present case the conveyance was by a vehicle bus Reg No. KBH 028C. I am satisfied that the conviction was safe but the sentence of fifteen years for 21kgs of Cannabis Sativa is harsh.

The sentence of 15 years imprisonment is hereby reduced to four years. To that extent only does his appeal succeed/allowed.

Judgment read and delivered in open Court this 14th day of March 2013.

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M. MUYA
JUDGE

In the Presence of:-

State Counsel

Court clerk – Musundi

Accused - present