



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 313 of 2010

(From Original Conviction and Sentence in Criminal Case No. 1967 of 2010 of the Chief Magistrate's Court at Mombasa – L. Mutende (SPM))

ABUBAKAR SALIM NZALA APPELLANT

- Versus -

REPUBLIC RESPONDENT

JUDGMENT

The Appellant Abubakar Salim Nzala pleaded guilty to the charges on the day of plea on the six counts.

The facts given by the prosecutor are reproduced herebelow thus-

“On the 3rd June 2010 at Bamburi Estate in Likoni at 5.00pm Police Officers from Likoni Police Station acting on information received that the Accused persons were in a certain house smoking cannabis sativa and sniffing heroin in a house owned by the 1st Accused. They moved to the said house. On arrival they found eight young men there. They are all before the Court. They were seated. They surrounded the house and informed the Accused's their intention to search. A search was conducted in the house. Ten rolls of dry green plant material and small quantity of brownish powder they suspected to be heroin was recovered. On the table in the house police officers recovered a brown piece of windscreen (broken) and ashes on the table, which made the police establish that the Accused persons were smoking the suspected cannabis and heroin. They were all arrested and taken to police station. The police took possession of the exhibits. They took them to the Government Analyst. The report from the government analyst confirmed the dry plant material was cannabis sativa and the brown powder was heroin. The satchet of heroin was found to be 20 grammes. The satchet of heroin, the ten rolls, the report were produced as exhibits.”

On the 1st and 2nd Count the Appellant is charged with trafficking by way of storing a satchet of heroin with a street value of Kshs. 200/- and ten rolls of cannabis sativa of the street value of Kshs. 2,000/-.

There were eight men found in a house smoking, inhaling and sniffing narcotic drugs as per the facts given. They cannot at the same time be deemed as storing the same stuff as they were consuming it. There is no logic in charging them with trafficking the same stuff they were consuming. Storing also

presupposes large quantities.

The Accused persons were found with a satchel of heroin and some ten rolls of cannabis sativa on the Appellant and 20 rolls on the 8 Accused persons. It is ridiculous to claim that they were trafficking on them. The two counts of trafficking were not proved beyond reasonable doubt and the conviction is found unsafe.

It is hereby quashed and the sentence set aside. The Appellant had pleaded guilty on Counts 3, 4, 5 and 6. The sentences were harsh and excessive they are reduced to a fine of Kshs. 50,000/- in default one year imprisonment on Count No. 3. Kshs. 50,000/- fine or one year imprisonment on Count No. 4. Kshs. 50,000/- fine in default one year imprisonment on Count No. 5. Kshs. 50,000/- in default one year imprisonment in respect of Count No. 6.

Sentences to run consecutively. To that extent only does the appeal succeed.

Judgment read and delivered in open Court this 31st day of May, 2013.

M. MUYA
JUDGE

In the presence of:-

Mr. Ayodo for the State

Appellant - present

Court clerk – Mr. Musundi