



PATRICK ODOYO JABUYA..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(From the original conviction and sentence in Criminal Case No. 40 of 2008 of the Senior Principal Magistrate's Court at Limuru by A.O. Aminga - Resident Magistrate)

J U D G M E N T

The appellant, **PATRICK ODOYO JABUYA** was convicted for the offences of Being in possession of Cannabis Sativa **contrary to section 3(1) (2) of the Narcotic Drugs and Psychotropic Substances Control Act**; and also of Trafficking of Cannabis Sativa **contrary to section 3 (1) (2) (a) of the Narcotic Drugs and Psychotropic Substances Control Act**.

For the offence of Trafficking, he was fined Kshs.1,000,000/-, in default 10 years imprisonment. And for the offence of being in possession, he was fined KShs.300,000/-, in default 3 years imprisonment.

In his appeal he has challenged both the conviction and sentence.

It is clear that when the appellant was taking plea, the charge and the particulars thereof were read out to him in Kiswahili.

That presupposes that the trial court did verify that the language which the appellant understood was Kiswahili.

However, when **PW 1** testified, he did so in English. There was no interpretation into Kiswahili.

The failure to provide the appellant with an interpreter violated his rights under **section 77 (2) (f) of the Constitution, as well as under section 198 (1) of the Criminal Procedure Code**

On that basis alone, this appeal succeeds.

Meanwhile, it is also clear that after **PW 1** testified, the charge-sheet was amended.

The proviso to **section 214 (1) of the Criminal Procedure Code** states, in mandatory terms, that where a charge is altered at any stage of the trial, before the prosecution closes its case;

“The court shall thereupon call upon the accused person to plead to the altered charge.”

As the learned trial magistrate did not call upon the appellant to plead to the altered charge, that is another ground upon which the conviction stands vacated.

In the result, the learned state counsel, Ms Mwanza, was right to have conceded the appeal herein.

The appeal is allowed; the conviction is quashed and the sentences are set aside. I order that the appellant be set at liberty forthwith unless he is otherwise lawfully held.

Dated, Signed and Delivered at Nairobi this 29th day of February, 2012

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FRED A. OCHIENG
JUDGE