



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CRIMINAL APPEAL CASE NO. 351 OF 2010

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NZEYIMANA MARIAM

.....**APPELLANT**
VERSUS

REPUBLIC**RESPONDENT**

(From original conviction and sentence in criminal case Number 390 of 2010 in the Chief Magistrate's Court at Nairobi – Mr. G. C. Mutembei (CM) on 11/03/2010)

JUDGMENT

1. The appellant **Mariam Nzeyimana**, was charged and convicted for the offence of being in possession of psychotropic substance contrary to **Section 3(1) and 3(2) (b)** of the **Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994**. She was sentenced to serve five years imprisonment commencing from 11th March 2010.
2. On the 2nd July 2010 she filed an appeal based on six grounds which her advocate, learned counsel Mr. Swaka, later condensed into two in his submission.
3. Mr. Swaka submitted that the drug found in the possession of the appellant is a prescription drug used in the treatment of insomnia and in surgical procedures. That the appellant came all the way from Rwanda to purchase it in Kenya for her own use and was not trafficking in it.
4. Mr. Swaka also urged that the appellant was not given a chance to produce the prescription when she was arrested. That due to a language challenge and the mental anguish she was undergoing her plea was not unequivocal. According to the learned counsel, the appellant admitted to possessing a prescription drug and not trafficking in narcotic substance.
5. The learned counsel urged the court to consider releasing the appellant for reasons that the prosecution had treated her as a first offender, she had already served three years out of the five years imprisonment and she is a mother of four.
6. Learned counsel Mr. Mulati opposed the appeal on behalf of the state. He urged that the appellant did produce a prescription at the time of arrest, purported to have been made out by Kenyatta National

Hospital. Investigations later revealed that Kenyatta National Hospital did not issue such a prescription.

7. He further urged that the drug is contained in the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994, and he associated himself with the conviction and sentence.

8. I have analysed and re-evaluated the proceedings of the lower court and I am not persuaded that the plea was not unequivocal. The appellant did not plead to the charge immediately after her arrest. She waited for a prescription that she had handed to the police to be investigated.

9. Secondly it is a matter of public notoriety of which I take judicial notice, that Rohypnol is a very dangerous drug with the ability to not only induce unconsciousness, but to also erase short term memory. It is highly unlikely that a doctor would have prescribed it to one patient in such a large quantity as was found in the possession of the appellant at the time of arrest. The appellant was found in possession of 2090 tablets. For the appellant's counsel to state that the defence had no idea where the document sent to Kenyatta National Hospital for investigation came from, is to insinuate that the prosecution planted it. This then begs the question as to motive. There is nothing on the record to suggest that the police, who arrested the appellant, knew her before nor that there existed bad blood between the officers who arrested her, and the appellant to cause them to frame the appellant.

10. I have considered the submissions of both counsels on record and I am satisfied that the right charge was brought against the appellant. While Rohypnol is a prescription drug it is also included in the substances prohibited under the Narcotic Drugs and Psychotropic Substance Control Act. I note from the record that both the charge and the facts were read to the appellant and she did not just answer yes. She stated that she admitted the facts as true. She did not raise any issue of difficulties in understanding the language used in court during the plea.

11. There was no reason for the learned trial magistrate to inquire into the mental state of the appellant if the appellant did not exhibit out of the ordinary behaviour, and she did not raise the issue with the court.

12. I therefore find the appeal unmeritorious and see no reason to interfere with the lawful sentence imposed upon the appellant by the learned trial magistrate.

13. The appeal stands dismissed.

SIGNED DATED and **DELIVERED** in open court this **2nd** day of **May 2012**.

L. A. ACHODE
JUDGE