



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 624 of 2010

FAITH WANJIRU NJOGU.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case Number 568 of 2009 in the Chief Magistrate's Court at Nairobi – G. C. Mutembei (CM) on 23/03/2009)

JUDGMENT

1. The applicant **Faith Wanjiru Njogu** has filed an appeal against the sentence imposed upon her by the learned chief magistrate sitting at Nairobi Law Courts. The Appellant was first arraigned in court on 23rd March 2009 facing a charge of **Trafficking in Narcotic Drugs** contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994**. She entered a plea of **'Guilty'** to the charge. **"it is true"**.

2. The Court Prosecutor S P Ngata read the facts out as required by law. The Appellant responded:

"I admit the facts as true"

Thereby maintaining her plea of guilt. In her written submission the appellant confirms as follows:

"I was selling the heroin for the children"

3. The trial magistrate then convicted the Appellant on her own plea of guilty in accordance with **Section 207(2)** of the **Criminal Procedure Code**.

4. I am satisfied that the Appellant entered a clear and unequivocal plea of guilty to the charge of trafficking in Narcotic Drugs. The Appellant in her written submissions has not challenged her conviction. Her appeal is only against her sentence which she terms **'excessive'**.

5. The learned State Counsel, Mr. Mulati opposed this appeal and urged the court to uphold the sentence as being within the law. The Appellant however submitted that the sentence was not within the law. She submitted that the record did not show what the trial court considered in meting out the sentence. The Appellant further submitted that the trial magistrate did not consider her mitigation. She urged the court to look at all the circumstances of the case and order that the period the Appellant had served be deemed sufficient for the offence.

6. Section 4(a) of the Narcotics Drugs and Psychotropic substance Control Act No. 4 provides for penalty upon conviction for the offence of trafficking in narcotic drugs as follows:

“Any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable”

(a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or

(b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.

7. The substance found in the appellant’s possession was heroin, which falls within the provisions of the trial magistrate sentenced the appellant to a fine of Kshs.1 million in default to serve 12 months imprisonment. The appellant was also to serve five years imprisonment. Although an appellate court has the discretion to interfere with the decision of a lower court on appeal or revision, that discretion must be exercised judiciously.

In **Sayeko vs. Republic [1959] KLR 306**, held:

“The appellate court will not ordinarily interfere with the discretion exercised by the lower court unless it is evident that the lower court has acted upon some wrong principle or overlooked some material factor or the sentence is manifestly excessive in the circumstances of the case”.

8. Offences under the Narcotic Drugs and Psychotropic Act No. 4 of 1994 are very serious and have grave ramifications on those affected. Hence the severe sentences provided under the Act. The learned trial magistrate was in order to sentence the appellant to five years imprisonment in addition to the fine in view of the gravity of the offence, and the provisions of the law. The record shows that the trial court did consider the appellant’s mitigation, before passing sentence.

For those reasons the appeal fails and is therefore dismissed.

SIGNED DATED and DELIVERED in open court this 24th day of October 2012.

**L. A. ACHODE
JUDGE**