



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 110 OF 2007

(From Original Conviction and Sentence in Criminal Case No. 2161 of 2007 of the Chief Magistrate's Court at Mombasa: R.K. Kirui – Ag. P.M.)

ABDALLA JAJI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant herein **ABDALLA JAJI**, had been arraigned before the learned Ag. Principal Magistrate **HON. R.K. KIRUI** charged with the offence of **BEING IN POSSESSION OF NARCOTIC DRUGS CONTRARY TO SECTION 3(1) as read with S. 3(2)(b) OF THE NARCOTICS AND PSYCHOTROPIC SUBSTANCES ACT 1994**. The particulars of the charge were that:

“On the 7th day of July 2007 at Darulrulum Village Likoni Location, within Mombasa District of the Coast Province, was found being in possession of narcotic drugs to wit one satchet of Heroin street value Kshs.200/- in contravention of the said Act.”

The Appellant pleaded guilty to the charge and upon conviction was sentenced to serve ten (10) years imprisonment and in addition fined Kshs.1.0 million in default to serve two (2) years imprisonment. Being aggrieved with both his conviction and sentence the Appellant filed this present appeal.

MR. ONSERIO who appeared for the State conceded this appeal. Having myself perused the record of the proceedings from the lower court I am inclined to agree with this concession. The prosecution failed to produce as exhibits the satchet of heroin allegedly recovered from the Appellant and also failed to produce any report from the Government Chemist to prove that what was recovered was actually a prohibited narcotic drug. These are serious omissions and nullify the conviction of the Appellant. I therefore quash this conviction and set aside the sentence which has no basis. Appellant is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated and Delivered in Mombasa this 20th day of April 2011.

M. ODERO
JUDGE

In the presence of:
Appellant in person
Mr. Onserio for State