



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**CRIMINAL APPEAL NO.23 OF 2010**

**HUMPHREY AMUSALA ODONGO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From the conviction and sentence of E.O. Obaga, P.M., in Busia PMC.Cr. Case No.636 of 2009)**

**J U D G E M E N T**

The appellant, Humphrey Amusala Odongo, was originally charged with the offence of Trafficking in A Narcotic Drug Contrary to Section 4 (a) of the Narcotic Drugs and Psychotropic Substances Control Act, Act No.4 of 1994. He was convicted and sentenced to 5 years imprisonment with a fine of Kshs.One Million, or in default, one additional year in prison. He appealed against the conviction and sentence.

The prosecution facts are as follows in summary as based on the testimony of PW1. On the morning of 30.4.2009 the appellant boarded a matatu Registration No KBA 955 S, a Toyota, at Mundika along Busia – Kisumu Road, facing Kisumu. The conductor who assisted him to board, i.e PW2, observed that the appellant had three bags – a large black bag with red strips, a smaller black bag, and a brown bag which he carried in the hand as he entered the matatu. The two black bags were each tied at the roof top of the motor vehicle and the matatu proceeded.

A few kilometers ahead and before reaching Bumala, the matatu came across an Anti-Narcotic squad check-point which was staging a check of motor vehicles for drugs. The matatu stopped to inquire from the passenger whether anyone of them was carrying any illegal substances. None of the passengers responded but the appellant tried to disembark at that point. However the conductor and driver of the matatu KBA 855 S prevented the appellant from disembarking as the Anti-Narcotic squad approached. He had indicated to them at the time of boarding that he wanted to catch up with a bus called Paldam.

The driver of the matatu who was Patrick Baraza Namulanda, PW2, confirmed in details, the testimony of PW1.

PW 3, Cpl Solomon Koome, was part of the Anti-Narcotics squad. He confirmed that he with his colleagues, searched the matatu KBA 855 S on the material day. They found the appellant carrying a brown bag in which green dried bhang was carried. They also found two other bags with the drug and their inquiry pointed to the appellant as the owner. They arrested him and later charged him with the offence.

A Government Analyst stationed at Kisumu testified on behalf of his colleague, one Lagat, who was absent because of sickness. He produced the analyst's report confirming that the samples earlier taken from the bags were cannabis sativa, grouped as forbidden under the Narcotic Drugs and Psychotropic Substances Act, Act No 4 of 1994.

The court accordingly found it necessary to put the appellant on his defence. He stated that he boarded the matatu at Suo. He found passengers in the matatu. On the way the Police stopped the matatu which they searched. He admitted he was carrying a bag with bhang but said that the same had been given to him to carry by the conductor, PWI. He said that he had no luggage at the time of boarding the matatu. He admitted that he had not known the conductor nor the driver before. He denied that one of the bags found carrying bhang belonged to him.

The honourable trial Magistrate considered appellant's defence but dismissed it as untrue. He believed the prosecution evidence and convicted the appellant as charged.

I have carefully considered the evidence on record. I find no truth in the appellants defence. The evidence against him was straight forward and cogent. The appellant did not deny boarding the matatu in question although he tended to say that he did so elsewhere, not at Mundika as testified by the prosecution witnesses. In my view, however, it made no difference where the appellant boarded. What mattered is that he was found carrying one bag with the bhang and that his explanation to it was not believed or was not reasonable.. On the other hand, there was sufficient evidence to the effect that the three bags all belonged to appellant.

The court notes also that although the appellants had raised several points of complainants in his petition of appeal, none of them had merit. Nor did the appellant raise any arguable issue in his written submission.

In the above circumstances, I find no merit in the appellants appeal over the conviction.

As concerns that sentence, the appellant should consider himself lucky in escaping with five to six years as the total sentence. The offence is serious and much stiffer sentences are generally meted out.

The result is that the appeal is dismissed in its totality. Orders accordingly.

Dated and delivered at Busia this 19<sup>th</sup> day of september 2011.

**D.A. ONYANCHA**  
**JUDGE**