



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 310 OF 2007

ABED SALIM IBRAHIM APPELLANT
VERSUS
REPUBLIC..... RESPONDENT

(From the original conviction and sentence in Criminal Case No.2790 of 2006 of the Chief Magistrate's Court at Kibera by Mwangi (Miss) – Senior Principal Magistrate)

JUDGMENT

ABED SALIM IBRAHIM, was convicted for the offence of Trafficking in Narcotic Drugs **contrary to section 4 (a) of the Narcotic Drugs and Psychotropic Substances Control Act.**

When he prosecuted his appeal before me the appellant said that he was not challenging the conviction. He was only asking for a reduction of the sentence, so that he could have an opportunity to go and look after his wife and two children.

He told the court that during the 5 years that he had been in prison, he had learnt many things.

Meanwhile, his health was continuing to fail.

And as if nature was conspiring against him, some 5 members of his wider family perished in the recent ferry disaster off the shores of Zanzibar Island. As it is those members of his wider family who used to help in looking after his wife and children, the appellant feels that his immediate family would now be extremely vulnerable.

When the court inquired from the appellant where he hailed from, he said that he hails from Dar-es-salaam, Tanzania.

In answer to the appeal, Ms Mwanza, learned state counsel, submitted that the appeal was undeserving because the sentence handed down to the appellant was very low.

In so saying, the respondent pointed out that the maximum penalty for Trafficking in Narcotics was life imprisonment.

Whilst I appreciate the appellant's anxiety about the well-being of his wife and children, I believe that he ought to have appreciated the fact that when he was trafficking in narcotic drugs, he was taking a risk. He knew that it was unlawful to do so. He also knew or ought to have known that there was a possibility that he could be arrested.

If he did not know the seriousness of the offence he was committing, at the time he was doing so, the reality must have now dawned on him.

If he was not arrested, he would probably have made some good money, which would have benefited him and his family. However, such a “success” on his part, would have yielded misery to those who would have consumed his lethal cargo.

As things stand, the appellant’s luck did not hold good. His potential victims were spared misery. Instead, it is he and his family who must now suffer because of the wrong choices he made.

I sympathize with the appellant’s family, but I do not sympathize with the appellant. He is reaping what he sowed.

He has only served 5 years out of the 10 years imprisonment.

As the respondent noted, the maximum penalty for Trafficking in Narcotics is life imprisonment. Therefore, a sentence of 10 years in prison is relatively light. I therefore find no reason, in law or in fact, for reducing the same.

Accordingly, the appeal is dismissed.

Dated, Signed and Delivered at Nairobi, this 7th day of November, 2011.

.....
FRED A. OCHIENG

JUDGE