



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 163 of 2008

JOHN PAUL OCHOLA.....1ST APPELLANT

STEVE BIKO ONDOLO.....2ND APPELLANT

JUDGMENT

JOHN PAUL OCHOLA and STEVE BIKO ONDOLO, the appellants were charged with trafficking in narcotic drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994 (the Act). They were charged that on the night of 27th and 28th October 2007 at about 3.00 a.m. at Kwanguku junction along Nakuru Nyahururu Road in Laikipia District of Rift Valley Province they were jointly found trafficking 1502 stones of bhang with a street value of Kshs.1 million which was not medically prepared and not authorized under the Regulations in the Act. They denied the charge but after trial before the Ag. Principal Magistrate at Nyahururu they were convicted and sentenced to 10 years imprisonment and a fine of Kshs.3 million and in default of payment of that sum to serve an additional 1 year's imprisonment. They have appealed against both the said conviction and sentence.

In his submissions the 1st appellant contended that the prosecution failed to prove the case against him as it did not adduce sufficient evidence to support his conviction. He contended that he only accompanied the 2nd appellant who had been called to go and repair a vehicle that had broken down along the Nakuru Nyahururu Road. When he got there he was not concerned with what was in the vehicle. If he was involved in the trafficking of bhang, having seen the police from a far he would have run away and not waited for them. In his view the charge against him is a fabrication as the police failed to call one Johana Chaka to whom the vehicle had been hired.

On his part the 2nd appellant denied being found in possession of the bhang and submitted that he was only a mechanic called to repair the broken down vehicle. He also contended that the owner of the vehicle having said he never knew him, the police should have called Johana Chaka to whom the vehicle had been hired to say how the bhang got into the vehicle.

Opposing the appeal Mr. Njogu, learned state counsel, submitted that it is clear from the evidence of the two police officers that the two appellants were found in charge of the vehicle in which there was bhang. He dismissed their defence as totally untenable, the appellants having not even said how they travelled to the scene.

I have considered these submissions and carefully read the lower court record. The appellants do not deny that they were found at the scene with a broken down vehicle which had a large consignment of bhang. Their case, as I have already pointed out, is that the 2nd appellant, a mechanic, was called by a friend of the owner of the vehicle to go and repair it and the 1st appellant who was visiting with him accompanied him to go to where the vehicle was. When they got there police bounced on them when the owner of the vehicle had gone to get a

breakdown.

Like the trial magistrate I find the appellants' defence totally untenable. The 2nd appellant did not give the name of the person who called him to go and repair the vehicle. In his defence he also did not even say he had been with the 1st appellant and that he had travelled with him to the scene. His account regarding the disappearance of the person they found with the vehicle there at the scene contradicted that of the 1st appellant. While he claimed that he is the one who asked that person to go for the breakdown, the 1st appellant claimed that that person ran away on seeing the police. In the circumstances the learned trial magistrate was right in rejecting their defences and with that I dismiss their appeals against conviction.

As regards sentences Section 4 of the Narcotic Drugs and Psychotropic Substances Control Act provides that any person who traffics in narcotic drugs shall be guilty of an offence and liable to a fine of Kshs.1 million or three times the market value of the narcotic drugs whichever is greater and in addition to imprisonment for live. The bhang the appellants were found with was valued at Kshs.1 million. The fine of Kshs.3 million being three times that value is what the law provides for and 10 years imprisonment against the live sentence provided for by the Act cannot, given the amount of bhang the appellants were found with, be said to be harsh. In the circumstances I also dismiss the appeal against sentence. In the upshot I dismiss this appeal in its entirety.

DATED and delivered this 28th day of January, 2010.

D. K. MARAGA
JUDGE.