



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 138 of 2009

ALICE KINGORI NDUTA.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant herein was arraigned before the Principal Magistrate Embu on 9/7/2009 to answer a charge of *“Being in possession of Narcotic Drugs c/s 3(1) (a) as read with section 3(2) of the Narcotic Drugs and Psychotropic Substances (control) Act No. 4/94”*.

She admitted the charge which was interpreted to her in Kikuyu language which she clearly understood. The facts were narrated to the court by the prosecutor and the appellant admitted that they were true. She was therefore convicted on her own plea of guilty and sentenced to serve 3 ½ years imprisonment.

Being aggrieved by the conviction and sentence, she filed this Appeal through Morris Njage & Co. Advocates. He proffered 4 grounds of Appeal as per the petition of Appeal dated 17/7/09 as hereunder.

1. The charge was fatally and incurably defective in the circumstances.
2. The trial proceedings were, fatally defective and trial a nullity. The appellant was not tried in Kikuyu the language she indicated she understood.
3. The plea was equivocal. In response to the facts, the appellant only admitted that the cannabis was recovered from her *“home”*.
4. The appellant was sentenced to teach her *“a lesson”*, and *“other would be offenders,”* when she was a first offender. She was sentenced on the wrong principles. The sentence was therefore manifestly excessive.

She claims that the sentence was manifestly excessive. I must say however that the sentence of 3 ½ years is in my view not Excessive and if the conviction was to stand, I would have no reason to interfere with the said sentence, so ground 4 must fail.

On ground 3, my finding is that the plea was unequivocal. Although the appellant’s response to the charge was *“It is true”*, the facts were clearly explained to her and she admitted the same admitting that she was not just found with the said substance but that the same was indeed cannabis. She therefore understood the charge and the particulars very well. The record shows that the language used was Kikuyu and ground 2 of Appeal is also baseless.

On ground 1 however, I agree that the charge was fatally defective. The charge sheet referred to a Section 3 1(a) which is non-existence in the Act. It also refers to section 3(2). Section 3(2) has two sub-sections i.e. (a) and (b) which both deal with totally different substances. The charge sheet should have specified which part of Section 3(2) the appellant was being charged with. The charge was therefore bad for duplicity. It is trite law that one cannot be convicted of an offence unless the same is clearly defined and the penalty therefore is prescribed in written law. The appellant was therefore convicted for an offence which was not clearly defined or supported by the provisions of law that were relied on by the prosecution.

The state conceded that the charge was defective and I also find so. This appeal therefore succeeds. The same is hereby allowed. The conviction is hereby quashed and the sentence set aside. The appellant is to be set at liberty unless he is otherwise lawfully held.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 17th day of June 2010.

In presence of :- Mr. Njage for Applicant and Mr. Wohoro for the State.