



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CRIMINAL APPEAL NO. 88 OF 2009

(From Original Conviction and Sentence in Criminal Case No. 1794 of 2009 of the Chief Magistrate's Court at Mombasa: C.P. Mwangi – C.M.)

PETER NYAMOANGA MARWA APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGEMENT

The Appellant **PETER NYAMOANGA MARWA**, was charged before the Chief Magistrate, Mombasa Law Courts with the offence of **TRAFFICKING IN NARCOTIC DRUGS CONTRARY TO SECTION 4(a) OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCE ACT NO. 4 OF 1994**. The particulars of the charge were that

“On the 27th of May 2009 at Mariakani Weighbridge along Mombasa-Nairobi highway in Kaloleni District within the Coast Province jointly with another not before court trafficked in Narcotic drugs by transporting 397 rolls of Cannabis with a market value of Kshs.39,700 in motor vehicle registration KBE 297V AKAMBA BUS in contravention of the said act.”

The Appellant pleaded guilty to the charge and was convicted. After hearing his mitigation the trial court sentenced him to a fine of Kshs.1.0 million in default one year in jail and in addition to serve seven (7) years jail. Being dissatisfied with both his conviction and sentence the Appellant filed this present appeal. The Appellant who appeared in person at the hearing of his appeal relied on his written submissions in which he submitted that his plea of guilty was not unequivocal. **MR. ONDARI** learned State Counsel opposed the appeal.

I have carefully perused the proceedings from the lower court. The charge was read out to the Appellant on 28th May 2009. The record indicates that the interpretation was **“English/Kiswahili”** which the Appellant fully understood. The facts were read out by **CHIEF INSPECTOR KITUKU** and the Appellant replied

“The facts are correct”

The Appellant opted not to mitigate and the learned trial magistrate proceeded to convict him upon his own plea of guilty in compliance with S. 207 of the Criminal Procedure Code. I am satisfied that this plea was properly recorded. The proceedings were conducted in Kiswahili a language which the Appellant fully understood. The Appellant's own responses were clear and unequivocal. In his submissions the Appellant claims that he was **‘cajoled’** into pleading guilty. He does not name the person who so cajoled him. He has made no such allegation against the learned trial magistrate or against the court prosecutor. I dismiss this ground of appeal. I find that the Appellant's plea was unequivocal and I do hereby confirm his conviction.

The Appellant was accorded an opportunity to mitigate but he elected to say nothing. That was his

choice and indeed one is not obliged to make any statement in mitigation. The learned trial magistrate then imposed sentence. The value of the recovered bhang was Kshs.39,700/-. S. 4(a) of the Narcotics Act provides for a fine “*of one million shillings or three times the value of the narcotic drug or psychotropic substance, whichever is the greater*”. In this case three times the value would amount to a fine of Kshs.119,100/- clearly of **greater value** is the Kshs.1.0 million fine. I find that this fine imposed was lawful. The maximum penalty is imprisonment for life. The Appellant was sentenced to seven (7) years which is far below this maximum. Drug trafficking is a serious offence with dire consequences to users and to the country alike. The sentence imposed was neither harsh nor excessive. I do therefore uphold the sentence as opposed by the trial court. In short this appeal fails in its entirety.

Dated and Delivered in Mombasa this 25th day of October 2010.

M. ODERO
JUDGE

Read in open court in the presence of:-
Appellant in person
Mr. Muteti for State

M. ODERO
JUDGE
25/10/2010