

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 676 of 2007

(From original Conviction and Sentence in Criminal Case No. 2853 of 2006 of the Senior Principal Magistrate's Court at Kibera)

MOHAMED RIAZ BUTTAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This appeal was filed by the Appellant himself. Mr. Gathenji for Appellant argued that the Appellant was charged with the offence of trafficking Narcotic Drugs contrary to Section 4 (a) of Act 4 of 1994.

He was convicted and sentenced to 5 years imprisonment and 1 extra year in default 100,000/= fine. He was found at Jomo Kenyatta International Airport trafficking 37.2. grams of drug Diacetylmorphine commonly known as Heroine market value Shs. 37,200/=.

The appellant submits that conviction was not proper. There was contradiction evidence. The judgment did not meet standard required. The Magistrate did not resolve the contradictions or give reasons refer to the case of Okali Okoth. The Magistrate did not comply with Section 169 Criminal Procedure Code.

The accused was convicted on circumstantial evidence and there was no connection with drugs.

Miss Maina State Counsel in reply said the State concedes the appeal on the grounds that the prosecution case has created doubts which ought to have been resolved in favour of the Appellant. The State having conceded the appeal I therefore quash the conviction and set aside sentence.

I observe that much time has passed and there has been rethinking of the case. I order the Appellant to be set free forthwith unless otherwise lawfully held.

Dated and delivered at Nairobi this 1st day of October 2010.

J. N. KHAMINWA

JUDGE