

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 169 of 2007

WILFRED OCHIENG OJWANG.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

JUDGMENT

Wilfred Ochieng Ojwang, the appellant herein was charged jointly with another with the offence of trafficking in narcotic drugs contrary to section 4(9) of the Narcotic Drugs and Psychotropic Substances Control Act, No. 4 of 1994 Laws of Kenya. The particulars of the offence state that on the 21st day of December 2005 at about 11.30 a.m. at Salгаа roadblock along Eldoret-Nakuru road in Nakuru District within Rift Valley Province, the appellant with another were jointly found trafficking 935 stones of cannabis sativa in a motor vehicle registration number KAN 470Q Toyota Corona which was not in its medicinal preparation valued at Kshs 500,000/=.

The appellant pleaded guilty to the charge and upon his conviction he was sentenced to ten (10) years imprisonment. The appellant has now appealed against the sentence. He pleaded with the court for leniency. He argued that it was his first time to commit an offence, since he was incarcerated on 25th July 2007; he has suffered and learnt a lesson regarding his mistakes. While in prison, he has also been trained in carpentry and would wish to use his skills gained in prison to support his family and to be an example to the others.

This appeal was opposed by the State; learned counsel for the State **Mr. Njogu** submitted that the appellant was properly convicted on his own plea of guilty. The plea was properly taken. The narcotic drugs namely bhang was submitted to the government chemist for analysis. A report was produced. The amount of the narcotics was colossal. According to counsel for the state, there is no justifiable reason why this court should interfere with the sentence.

This being a first appeal, and as mandated by law, I have gone through the proceedings before the trial court. I am satisfied that the plea of guilt was properly taken by the learned trial magistrate. The trial court also considered the mitigation offered by the appellant, however upon consideration of the seriousness of the offence and the effect the narcotic drugs which was meant for sale was going to cause to the larger public, the trial magistrate sentenced the appellant to ten (10) years.

The principles to bear in mind while dealing with the trial court's discretion while sentencing are well settled. This court cannot interfere in the trial court's exercise of discretion in sentencing unless certain factors were not taken into account or the sentence itself is illegal. See the case of **Ogalo s/o Owuor [1954] E.A.C.A at page 270** where the Court of Appeal held as follows: -

“The court does not alter a sentence on a mere ground that if the member of the court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless it is evident that the judge acted upon some wrong principle or overlooked some material facts if the sentence is manifestly excessive in view of the circumstances of the case.”

The sentence provided for under **section 4(a) of the Narcotic Drugs and Psychotropic Substance (Control Act), 1994** is life imprisonment and a fine of less than 1 million shillings. The appellant was

sentenced to ten years imprisonment. I am in agreement with the State Counsel; there is no justifiable reason why this court should interfere with the learned trial court's exercise of its discretion in sentencing the appellant. In the circumstances the appeal is hereby dismissed. The conviction and sentence of the appellant is confirmed.

Judgment read and signed on 1st day of April 2009

M. KOOME

JUDGE