



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

Criminal Appeal 174 of 2007

JOHN OMONDI LIKOYO APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in the Senior Resident

Magistrate's Court at Homa Bay Criminal Case No.1322 of 2006

by E. K. MWAITA Esq., AG. S.R.M)

JUDGMENT

The appellant was charged with trafficking in Narcotic Drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1990. The particulars of the offence were that on 13th October 2006 at 7.00 a.m. along Imbo/Olare road in Homa Bay District within Nyanza Province the appellant jointly with others not before court were found trafficking in 1,360 stones and 600 long type rolls of Narcotic Drugs (bhang) in motor vehicle registration No. KAU 198 W. The appellant was convicted and sentenced to life imprisonment and in addition to pay a fine of Kshs.1,000,000/=.

The appellant was aggrieved by the said conviction and sentence and preferred an appeal to this court. In his petition of appeal he raised the following grounds:

“1. The trial magistrate erred in law in conducting proceedings that violated the rights of the appellant as per the

provisions of the Constitution hence null and void (sic).

2. The trial Magistrate erred in fact and in law in convicting the appellant based on evidence that was full of contradictions and without analyzing the evidence.

3. The trial magistrate erred in law and fact in failing to consider the evidence adduced by the appellant in his defence.

4. The trial magistrate erred in law and fact in convicting the appellant on a charge that was defective.

5. The sentence given was harsh in the circumstances.”

MS. Omolo for the appellant argued all the grounds of appeal but Mr. Mutai, Senior State Counsel, conceded the entire appeal on the first ground as aforesaid. The appellant's advocate submitted that the appellant was arrested on 13th October 2006. However, he was not taken to court until the 19th of October, 2006. No explanation was given by the police for the delay in arraigning the appellant in court. Counsel cited RONALD MANYONGE CHEPKUI VS REPUBLIC, Criminal appeal No.87 of 2006 at Kitale where Ochieng J cited with approval the Court of Appeal decision of GERALD MACHARIA GITHUKU VS. REPUBLIC, Criminal appeal No.119 of 2004. In that decision the appellant was charged with robbery with violence and was held in police custody for seventeen days before he was arraigned in court although the law required that he be taken to court within fourteen days of his arrest. The Court of Appeal expressed itself thus:

“Although the delay of three days in bringing the appellant to court 17 days after his arrest instead of within 14 days in accordance with section 72(3) of the Constitution did not prejudice the appellant and although, on the evidence, we are satisfied that he was guilty as charged, we nevertheless do not consider that the failure by the prosecution to abide by the constitutional requirements should be disregarded.”

The court went ahead to quash the conviction and set aside the death sentence that had been passed by the trial court. I agree with him.

Mr. Mutai readily admitted that the appellant's constitutional rights were violated. He added that the police did not offer any explanation for the six days' delay in arraigning the appellant before court.

In view of the above I allow this appeal, quash the conviction and set aside the sentence that was passed by the trial court.

The appellant is set at liberty unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at KISII this 10th day of November, 2008.

D. MUSINGA

JUDGE

Delivered in the open court in the presence of:

1. The Appellant
2. Mr. Kemo, Senior Principal State Counsel for the Republic
3. Mr. Oguttu HB for Miss Omollo for the Appellant.

D. MUSINGA

JUDGE