



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Appeal 588 of 2005**

**JOYCE WANJIRU ALIAS JENIFFER ADHIAMBO.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From the original conviction and sentence in criminal case No. 8066 of 2005 of the Chief  
magistrate's Court at Kibera)**

**JUDGMENT**

The appellant JOYCE WANJIRU MBUGUA alias JENNIFER ADHIAMBO OKELLO was convicted of the offence of trafficking in Narcotics Drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994 (first count). She was also convicted of the offence using a forged passport contrary to section 13(1) (D) of the Immigration Act – Cap 122 Laws of Kenya (second count). She was sentenced to serve ten (10) years imprisonment on the first count, and two (2) years imprisonment on the second count. Sentences were to run concurrently. She appealed to this court on both counts, as she had pleaded guilty to the charges.

Learned State Counsel Mrs. Kagiri conceded to the appeal on sentence. It was counsel's contention that though the sentence was lawful, the learned magistrate did not consider that the appellant was a first offender before sentencing her to ten (10) years imprisonment. The magistrate also did not consider that the appellant pleaded guilty to the charge; the drugs involved was merely 189 grams, and also that the appellant appeared remorseful.

I have considered the appeal and the submissions made before me. Sentencing is essentially an exercise of discretion by the trial court, and for an appellate court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or failed to take into account a relevant factor or that a wrong principle was applied or that short of these the sentence itself is so harsh and excessive that an error in principle must be inferred - see SHADRACK KIPKOECH KOGO –vs- REPUBLIC – Criminal Appeal No. 253 of 2003 Eldoret (unreported).

I have perused the record. In sentencing, the magistrate did not refer to the mitigation of the appellant, nor to the fact that the appellant had pleaded guilty to the charge, nor did the magistrate consider the quantity of drugs, the subject of the charge. In my view, the magistrate failed to take into account relevant factors in sentencing.

I am of the view that if the magistrate had taken into account the relevant mitigating factors, he would not have meted the sentences that he meted. In my view though the sentences imposed were perfectly legal, they were harsh and excessive as to amount to a miscarriage of justice. I observe that the maximum sentence under section 4 (a) of the Narcotic Drugs and Psychotropic Substances Act is a fine of one million shillings and imprisonment for life, while the maximum sentence under section 3(1) (d) of the Immigration Act is a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three years or both. Learned State Counsel concedes to the appeal on sentence. The value of the drugs was Kshs.189,000/=

In the premises I would interfere with the sentences. The appellant will now serve sentences as follows –

1. Imprisonment for a term of five (5) years for the first count of trafficking in Narcotic drugs effective from the date of conviction by the learned magistrate.
2. The sentence of two years imprisonment on the charge of using a forged passport is upheld.
3. The two above sentences will run concurrently, as ordered by the trial magistrate.
4. The order for deportation on finalization of sentence is upheld.

It is so ordered.

Dated and delivered at Nairobi this 20<sup>th</sup> day of June 2007.

**George Dulu**

**Judge**

In the presence of –

Appellant