

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Appeal 96 of 2003

(From Original Conviction and Sentence in Principal Magistrate's Court at Kericho Criminal Case No. 1462 Of 2003)

CHARLES OCHIENG OKELLO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Charles Ochieng Okello was charged with trafficking narcotic drugs contrary to **Section 4 (a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994**. The particulars of the offence were that on the 23rd May 2003, along Kericho-Nakuru highway at Chepseon township in Kericho district, the appellant, jointly with others not before court, trafficked narcotic drugs namely *cannabis sativa* to wit 1,175 stones with approximate street valued of KShs. 587,500/= while using motor vehicle reg. No. KAN 694A, Toyota RAV 4 in contravention of the said Act. He was alternatively charged with being found in possession of narcotic drugs contrary to **Section 3 (1)** as read with **Section 2 (a) of the Narcotic Drugs and Psychotropic Substances Control Act**. The particulars of the offence were similar to the main charge. The appellant pleaded not guilty to both charges. After a full trial, the appellant was convicted of the main count of trafficking drugs and sentenced to pay a fine of KShs.850,000/= or in default 10 years imprisonment.

The appellant was aggrieved by his conviction and sentence and has appealed to this court.

During the hearing of the appeal, the appellant abandoned his appeal on conviction. He however pleaded with the court to consider reducing the custodial sentence that was imposed upon him. He told the court that during his incarceration, he had undertaken various courses, which upon his release, would enable him to be a useful member of the society. He submitted that during his stay in prison, he had become a model prisoner and was in fact inducted as one of the prisoners who counseled other prisoners who were infected with the HIV/AIDS. He submitted that he had been in prison since 2003 when he was convicted. He pleaded with the court to reduce his sentence. Mr. Koech for the State opposed the appeal. He submitted that the sentence imposed upon the appellant was lawful and lenient. He urged the court not to interfere with the sentence since the amount of drugs found in possession of the appellant was substantial. He maintained that the court should dismiss the appeal.

I have considered the plea for reduction of sentence by the appellant and the objection thereto made by Mr. Koech on behalf of the State. The principles to be considered by this court in determining whether or not to interfere with the sentence imposed by the trial court on an appellant are well settled. An appellate court will not interfere with a sentence of a trial court unless it is established that the trial court took into consideration irrelevant factors or failed to take into consideration relevant factors before it arrived at its said decision on sentence. In sentencing an accused person, a trial court is exercising judicial discretion. That discretion can only be queried by an appellate court if it is established that the trial court sentenced a convict to serve an unlawful sentence.

In the present appeal, the appellant has made no allegation against the exercise of discretion by the trial magistrate. In fact, the appellant made no complaint that the trial magistrate failed to take into account

relevant factors when he sentenced him to serve the said term in prison. Taking into consideration the fact that the appellant was convicted of trafficking 1,175 stones of bhang, it is the view of this court that the sentence imposed fitted the crime. I agree with Mr. Koech that the damage that the said drugs would have done to the citizens of this country cannot be quantified. Although the appellant submitted that he is a model prisoner, the circumstances of this case precludes this court from interfering with the sentence imposed by the trial magistrate.

The appeal lacks merit and is hereby dismissed. The appellant shall serve the sentence that was imposed by the trial magistrate.

DATED at KERICHO this 5th day of NOVEMBER 2007

L. KIMARU

JUDGE