



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 39 of 2006

(From original conviction and sentence of the Chief Magistrate's Court at Nakuru in

Criminal Case No. 227 of 2006 [G. C. Mutembei {C.M.]

MOSES OPONDO OYIMBO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Moses Opondo Onyimbo was charged with the offence of trafficking in Narcotic Drugs contrary to Section 4(a) of the Narcotic and Psychotropic Substances (Control) Act, No.4 of 1994. The particulars of the offence were that on the 21<sup>st</sup> January 2006, at Soilo Road Block along Nakuru-Eldoret highway, the appellant trafficked in narcotic drugs, to wit five kilogrammes of *Cannabis Sativa* with a street value of Ksh.5000/= by transporting it in motor vehicle registration No.KAT 050S Nissan Bus in contravention of the said Act. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to serve five years imprisonment. The appellant was aggrieved by his sentence and duly appealed to this court.

In his petition of appeal, the appellant raised several grounds of appeal pleading with the court to reduce the custodial sentence that was imposed upon him. He stated that he was remorseful and was a first offender. At the hearing of the appeal he pleaded with the court to consider that he was taking a professional course at the time of his arrest. He urged the court to release him so that he could continue with his studies. Miss Opati for the State left the issue of sentence to the court.

The appellant is not appealing against conviction. He pleaded guilty to the charge. He was therefore convicted on his own plea of guilty. He is however pleading with this court to consider reducing the custodial sentence that was imposed by the trial magistrate. The principles to be considered by this court when determining whether or not to interfere with the exercise of discretion by the trial magistrate when sentencing a convict are well settled. The Court of Appeal in **Samuel Githua Njoroje vs Republic CA Criminal Appeal No.53 of 2006 (Nakuru) (Unreported)** held at page 2 as follows;

***“The principles upon which an appellate court can interfere with the discretion of a trial [Magistrate] as regards sentence are well settled. The appellate court can only interfere where the trial [Magistrate] in assessing the sentence has acted on wrong principles or imposed a sentence which is manifestly inadequate or manifestly excessive. (See Diego vs Republic [1985] KLR 621).”***

In the present appeal, the appellant was convicted of trafficking in narcotic drugs. In his mitigation, the appellant admitted that he dealt with the Narcotic drugs so as to finance his education. According to **Section 4(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act 1994**, any person who is found guilty of trafficking in narcotic drugs shall be liable to pay a fine of Ksh.1 Million shillings or three times the market value of the narcotic drugs and in addition to be imprisoned for life. The appellant was only sentenced to serve five years imprisonment. He was lucky to have escaped being fined the sum of Ksh. 1 Million. In the circumstances of this case, I hold that the trial magistrate properly exercised his

discretion when he sentenced the appellant to serve the said custodial sentence. Taking into consideration that the maximum sentence for the said offence is life imprisonment, the appellant was lucky to have been sentenced to serve five years imprisonment. He should ride his luck. It was evident that the appellant had become an expert in trafficking of narcotic drugs. The said narcotic drug is ruinous to the mental health of the citizens of this country, particularly the vulnerable component of the society *i.e.* the youth.

I find no compelling reason to interfere with the exercise of discretion by the trial magistrate when he sentenced the appellant to serve the custodial sentence. His appeal on sentence is dismissed. The conviction and sentence of the trial magistrate is hereby confirmed.

It is so ordered.

**DATED at NAKURU this 14<sup>th</sup> day of December 2007.**

**L. KIMARU**

**JUDGE**