

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 503 Of 2003

MOREEN MORAA MOGERE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Moreen Moraa Mogere was charged with the offence of trafficking narcotic drugs contrary to **Section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act (Act No. 4 of 1994)**. The particulars of the offence were that on the 31st of October 2003 at about 3.30 pm along Narok Mai Mahiu road at Ntulele Narok District, the appellant was found trafficking narcotic drugs namely *cannabis sativa (bhang)* to wit 18kgs in a matatu registration number KAP 205X Toyota Shark valued at Kshs 36,000/= in contravention of the said Act. When the appellant was arraigned before the trial magistrate she pleaded guilty to the charge. She was convicted on her own plea of guilty. She was sentenced to serve five years imprisonment and fined Kshs 30,000/=. If she was unable to pay the fine, she was to serve a further two years in prison. Being aggrieved by her sentence the appellant appealed to this court.

In her petition of appeal, the appellant was aggrieved that the trial magistrate had not considered her mitigation before sentencing her to serve a custodial sentence, which in her view was harsh and excessive in the circumstances. She urged this court to review her sentence and if possible sentence her to serve community service. At the hearing of the appeal, the appellant reiterated that she had admitted the offence but pleaded for this court to exercise leniency in sentencing her. She stated that she had engaged in the business of trafficking drugs because of financial problems, which were occasioned by the death of her parents. She urged this court to review her sentence by reducing the imprisonment term. Mr Koech for the State submitted that the sentence of five years imprisonment was sufficient for the offence which the appellant had committed. He however conceded that the additional sentence of two years imprisonment was illegal. He submitted that this court could review it.

I have considered the submissions made before me by the appellant and the response thereto made by Mr Koech on behalf of the State. The appellant is not appealing against conviction. She is only appealing against sentence. From the record of lower court it is evident that the appellant was a first offender. The narcotic drugs that was found in her possession were of a small amount compared with some of the amounts which this court has had occasion to deal with. The appellant appears remorseful and also appears to have learnt her lesson. Under the **Narcotic Drugs and Psychotropic Drugs Act** the punishment for a drug offender is pegged on the size of the narcotic drugs that are found in the possession of such an offender.

I have noted that the appellant was convicted and sentenced on the 3rd of November 2003. She has served slightly more than two years in prison. In the circumstances of this case, her plea that the term of imprisonment be reviewed has merit. I therefore set aside the sentences imposed by the trial magistrate and substitute it with an appropriate sentence of this court. I hereby commute the sentence to be served by the appellant to the period already served. She is therefore set at liberty and ordered released from prison unless otherwise lawfully held. It is so ordered.

DATED at NAKURU this 1st day of February 2006.

L. KIMARU

JUDGE