

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal 259 of 2004

VICTOR OKECHUKUU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant **VICTOR OKECHUKUU** pleaded guilty to 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** and sentenced to 7 years imprisonment. He had been arrested at Jomo Kenyatta International Airport and after two days emitted 22 pellets of a substance weighing 397.5 grams. The Government Analyst found the pellets to contain a white and beige substance which on testing found to be 50% heroin and 50% cocaine.

The Appellant now appeals to this Court only against the sentence on grounds it was excessive. In his filed petition of appeal and written submissions the Appellant urged the Court to take into account; one, that he had pleaded guilty to the charge, two, that he was a first offender, three, that he was remorseful and had reformed while serving this sentence, four, that he was a sole bread winner of his family including his younger siblings, five, that he was asthmatic and has had difficulty getting medical attention promptly.

MISS GATERU for the State opposed the Appeal. Learned counsel submitted that the sentence was lawful and neither harsh nor excessive. That the offence carried a maximum of life imprisonment and 7 years imprisonment was lenient. That the learned trial magistrate had considered the Appellant's previous clear record before passing sentence.

It is well settled that a trial court should give credit to an accused person who pleads guilty to an offence for saving courts time. More credit should be earned by an accused person who is found to have had a clear criminal record prior to the offence under consideration. The amount of drug involved in terms of its weight is another factor that should have been taken into consideration.

In this case the Appellant was a first offender. He was carrying a mixture of two narcotic drugs of the total weight of 397.5 grams. While this court cannot belittle the amount of drug involved, taking all factors into consideration, seven years imprisonment is rather harsh. The amount of drug, involved and accused person's previous record, whether or not he pleaded guilty and whether or not he is remorseful all go into influencing the length of sentence that the offence should attract. Having taken all these factors into account, I find that the sentence called for was lower in the ladder of the maximum sentence provided than was awarded in this case. I am persuaded to interfere with the sentence imposed which I do by reducing the sentence from seven years to 5½ years imprisonment from the date of sentence in the lower court. To that extent only, this appeal succeeds.

Dated at Nairobi this 15th day of March 2006.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant - Present

Miss Gateru for State – present

Huka: CC

LESIT, J.

JUDGE