

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

Criminal Appeal 156 of 2005

**(From original conviction (s) and Sentence(s) in Criminal case No. 2020 of 2005 of the
Chief Magistrate's Court at Kibera (Ms. Muketi – PM)**

**JOHN ZAKARIA Alias NJOVU.....
.....APPELLANT**

VERSUS

**REPUBLIC.....
.....RESPONDENT**

J U D G M E N T

JOHN ZAKARIA alias **NJOVU** was convicted in his own plea of guilty to the charge of **TRAFFICKING IN NARCOTIC DRUGS** to wit ½ kilograms of heroin of a street value of 566,500/- contrary to Section 4(a) of the **Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994**. He also pleaded guilty to being in possession of a forged passport and of using a passport issued to another person both contrary to **Section 73(1) (d)** and **Section 13(1) (f)** of the **Immigration Act**. He was sentenced to 10 years imprisonment in Count 1 and 2 years imprisonment in counts 2 and 3. He was aggrieved by the sentences and thus this appeal.

The Appellant submitted in writing a lengthy mitigation explaining his personal circumstances which led to his involvement in drugs. He said he was a young man and had learned 'his lesson' had reformed and would never venture into such action in his life. He pleaded with the court to reduce his sentence.

Mr. Makura, learned counsel for the State opposed this appeal. Counsel submitted that the applicable sentence was life imprisonment with a fine. Counsel submitted that in fact the sentence was not completely legal as the trial court overlooked to fine the Appellant and urged the Court to impose the fine but let the sentence of 10 years remain undisturbed.

Every sentence passed by a court should be commensurate to the offence committed with regard to previous criminal record or lack of it of the offender, whether he was remorseful, his age and whether he pleaded guilty among other factors. The Appellant pleaded guilty to the charge saving the Court very valuable time. The Appellant is a young man. He says that he is remorseful and he does impress the court to be sorry for his action. He has no previous record. The amount of heroin involved cannot be described as small since if it got its way into the streets, it could cause damaging effects to the citizens. However, I do not believe that the amount would justify a sentence of 10 years imprisonment. In the circumstances and taking account the various factors I have mentioned, I will allow the Appellant's appeal against sentence by setting aside the entire sentence passed. For the main count, I will substitute the sentence of 10 years with one of 6 years imprisonment with a fine of Kshs.1,699,500/- in default 12 months imprisonment. In counts 2 and 3 the court imposed the maximum sentence of 2 years imprisonment which was also harsh in the circumstances. In both counts I sentence the Appellant to 12 months imprisonment each. The prison terms should run concurrently from the date of the original sentence in the lower court save the default sentence for the fine which should run consecutively with the rest of the sentences.

Dated at Nairobi this 26th day of July 2006.

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LESIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellants

Mr. Makura for the State

CC: Huka

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LESIT, J.

JUDGE