



REPUBLIC OF KENYA

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

Criminal Appeal 82 of 2005

(From Original Conviction and Sentence in Criminal Case No.1271 of 2003 of the Principal Magistrate's Court at Kikuyu – M. W. Murage, P. M.).

DORIN AWUOR AMOLLO.....
.....APPELLANT

VERSUS

REPUBLIC.....
....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APP. NO. 210 OF 2005

BENARD OTIENO AYIER
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

CONSOLIDATED WITH

CRIMINAL APP. NO. 211 OF 2005

FREDRICK ODHIAMBO MUSUNGU.....
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

CONSOLIDATED WITH

CRIMINAL APP. NO. 214 OF 2005

SIMMON OKOTH OBIERO
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

JUDGMENT

The Appellants, **DORIN AWUOR AMOLLO, BENARD OTIENO AYIER and FREDCRICK ODHIAMBO MUSUNGU** were charged before the Principal Magistrate's Court at Kikuyu jointly with one count of being 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 Learned Magistrate after a full trial convicted the Appellants and accordingly sentenced them to five (5) years imprisonment.

The Appellants were aggrieved by the conviction and sentence. Consequently they both lodged separate Appeals. At the hearing of the Appeals, and both Appellants and the Learned State Counsel not objecting I directed that the Appeals be consolidated as they arose from the same trial.

When the Appellants appeared before me for the hearing of the Appeals, they all informed the Court that they were abandoning the Appeals on conviction. However they would pursue the Appeal on sentence. In support of their Appeals on sentence, the Appellants submitted that the sentence imposed on them was harsh and excessive. That they were remorseful and first offenders. They pleaded leniency from Court and that they were sole breadwinners for their families.

Miss Gateru, Learned Counsel appeared for the State and opposed the Appeal on sentence. Counsel submitted that the sentence imposed was legal. That the Appellants were each sentenced to 5 years imprisonment for an offence which carries a maximum sentence of 20 years. The sentence was therefore neither harsh nor excessive

I have considered the submissions by the Appellants and by the Learned State Counsel, as well as the facts and circumstances of this case and the law. Ordinarily an Appellate Court would not interfere with the sentence imposed by the trial Court unless it can be shown that:-

- (i). The trial Court imposed an illegal or such harsh and excessive sentence as to amount to a miscarriage of justice.
- (ii). The trial Court acted upon wrong principles, took into account immaterial factors or overlooked some material factors or
- (iii). The trial Court exercised the discretion capriciously.

See generally **OGALO S/O OWUORA VS REPUBLIC (1954) 19 EACA 270, JAMES VS REPUBLIC (1950) 10 EACA 147, NILSON VS REPUBLIC (1970) EA 599 and WANJEMA VS REPUBLIC (1971) EA 493.**

The offence for which the Appellants were convicted attracts a maximum sentence of 20 years. The Appellants were each sentenced to 5 years imprisonment. Certainly and as correctly argued by the Learned State Counsel, the sentences were lawful. In my view they were neither harsh nor excessive. I have looked at the sentencing notes of the Learned Magistrate and noted that she was alive to sentencing principles. She certainly did not take into account irrelevant matters or failed to take into account material factors in arriving at the appropriate sentence. In my view the Learned Magistrate did not exercise her discretion in sentencing the Appellants capriciously. Considering the amount of bhang

involved (30 Kilogrammes), the sentence imposed on each Appellant was certainly well disserved. It would appear that the Appellants were engaged in drug trafficking. I do not think the Appellants deserve any mercy or leniency in view of the damage that the drugs have caused to the youths of this country. The sentence will stand. Accordingly I dismiss the Appeals on sentence.

Dated at Nairobi this 27th day of September, 2006.

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MAKHANDIA

JUDGE