



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Criminal Appeal 142 of 2005

KENNEDY MACHUKA MOTOKI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence in Criminal Case No.1241 of 2005 of the Senior Resident Magistrate's Court at Narok – S. N. GITHENJI ESQ. S.R.M)

JUDGMENT

Appellant was charged with offence of Trafficking in Narcotic Drugs contrary to S.4(a) of the Narcotic Drugs and Psychotropic substances Act in that on 5th October 2005 at 11 a.m. at Siyapei Police road block along Narok/Maimahiu road, trafficked in a narcotic drug namely cannabis sativa to wit 86 stones worth shs.43,000/= in bus Reg. No.KAQ 622B.

He was convicted on his own plea and fined shs.500,000/= as well as to serve 10 years. Court also ordered that he serve 15 years imprisonment if he failed to pay fine. He has appealed both against conviction and sentence.

In his first ground of appeal appellant states that court failed to have the charge read and explained to him in a manner and language he understood.

However this is not what is revealed from the proceedings that the plea was properly taken and it was unequivocal. The appellant in the appeal does not state which language he understands well. However recordings show that the charge was read to him in English and translated into Kiswahili after which he stated:

“It is true”

After that facts were read to him and he again answered:

“The facts are correct and true”

After that a plea of guilty was entered against him. In his mitigation he clearly admitted that he was given the bhang and he knew what it was only he said that he was misled. It is clear therefore he understood both the charge and the facts read to him. The conviction therefore was proper.

As regards sentence Section 4(a) of The Act is very clear.

The maximum fine is 1 million shillings and life imprisonment, jail sentence is additional to the fine. Thus the fine of shs.500,000/= was proper.

However the court should have not been too harsh in awarding the jail term. The exact value of the drugs was not given when the facts were being read, though the particulars in the charge sheet show the value as shs.43,000/=. Appellant was a first offender and there was no indication that he was a regular trafficker. He pleaded for leniency and said he was misled.

Though the charge was serious the court should have been more lenient.

In the circumstances I allow the appeal to the extent that the jail terms of 10 years and 15 years respectively are set aside and each reduced to a term of 5 years to run concurrently from the date of conviction.

It is so ordered.

Dated 12th October 2006

KABURU BAUNI

JUDGE

cc. Mobisa

Mr. Chirchir for state.

Appellant P.I.P