



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**

**Criminal Appeal 541 of 2003**

**(From original conviction(s) and Sentence(s) in Criminal case No. 4508 of 2003 of the  
Chief Magistrate's Court at Kibera (Ms. Mwangi – P.M.)**

**ABDUL RAHEEM JUSTICE BAKARE**  
**Alias IBRAHIM SALAMIN AGBO LAGADE.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant, **ABDUL RAHEEM JUSTICE BAKARE** Alias **IBRAHIM SALAMIN AGBO LAGADE** has appealed only against the sentence. He had pleaded guilty to the offence of **TRAFFICKING IN NARCOTIC DRUGS** contrary to Section 4(a) of the **NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) Act No. 4 of 1994**. He was sentenced to five years imprisonment and to a fine of 1 million in default 3 years imprisonment.

In his submission the Appellant said that he was remorseful for the offence and pleaded for mercy and leniency from the Court. He also said he needed to go for a medical operation not available to him while in prison. He annexed no document to substantiate his claim.

**MISS OKUMU** learned counsel for the State opposed the appeal against sentence.

**MISS OKUMU** submitted that the sentence of 5 years imprisonment and a fine of 1 million, in default 3 years imprisonment was quite lenient. She also urged Court to order for Appellant's repatriation on serving the sentence.

I have considered the appeal. The amount of heroine involved was 1.564 kilograms which is quite a lot if it got into the streets in Nairobi it would cause great and disastrous effects on the society especially the youth. I will not disturb the sentence of 5 years imprisonment for the offence. As for the fine of 1 million, the **Narcotic Drugs and Psychotropic Substance (Control) Act** is very clear that the fine to be imposed should either be 1 million or three times the value of the drug, whichever is greater.No evidence was adduced to show the street value of the drug. Consequently the learned trial magistrate had no evidence before her and lacked any basis of determining the nature of the fine to impose. The fine imposed therefore lacked basis and cannot be allowed to stand.

Consequently I set aside the order of fine of 1 million and the default sentence of 3 years imprisonment.

The upshot of the appeal is that the Appellant should serve five years imprisonment from the date of sentence.

I also order that he should be repatriated to his home country of Nigeria after sentence.

It is so ordered.

Dated at Nairobi this 15th day of June 2005.

**LESIT, J.**

**JUDGE**

Read, signed and delivered in the presence of;

**LESIT, J.**

**JUDGE**