

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA
Criminal Appeal 150 of 2004

AUGUSTINE MUNYEKE APPELLANT

VERSUS

REPUBLIC RESPONDENT\

J U D G E M E N T

The appellant was charged with the offence of Trafficking with Narcotic Drugs Contrary to Section 4(a) of the Narcotic and Psychotropic substances Control Act No. 4 of 1994 in that on 29.5.2004 at 4.20 pm at Taveta bus stage trafficked in Narcotic drugs namely Cannabis Sativa 10 Kgs.

On 2nd of June 2004 he was taken before SRM Court at Taveta and after the charge was stated to him wherein he answered, **“I admit the charge. It is true.”**Wherefore the prosecutor applied for time to receive the report of Government Chemist before stating the facts of the offence to the accused.

On 22.6.04 the Appellant was brought before the court. The first thing the accused said, “I still admit the charge.” Thereafter the prosecutor read out the facts. The Appellant stated,

“The facts are true. I carried bhang knowing it was bhang.”

The trial magistrate proceeded to convict on plea of guilty.

In his grounds of appeal the Appellant complains of the proceedings held on 22.6.04 saying the charge was not read to him before particulars were read out to him. I find this ground has no merit. The Appellant was in court firstly on 2.6.04 when the charge was read to him. He had sufficient time to consider the matter as he was in custody throughout that period and he did appear in court twice before the 22nd June 2004. He could have changed his plea if he was not guilty.

I find that the charge was supported by facts and the proceedings were conducted in a regular manner. No prejudice was occasioned to the Appellant.

The other ground is that the sentence is harsh and excessive in the circumstances of this case. Before sentencing the trial magistrate received mitigating factors. The Appellant was first offender, the Appellant is a young man of 32 years and has an aged mother and children depending on him. That he was a Tanzanian national. The trial magistrate addressed his mind to the legal provisions as to punishment namely life imprisonment and a fine of Sh. 1 million. He was alive to the sentence being a fine of 1 million or 3 times the value of the drug and in addition jail term sentence.

On the side of the Appellant I do not find any fault in sentencing. However the State Counsel is of the view that the fine should be 3 times value of the drugs or be the amount whichever is higher the 1 million or 3 times value of the drugs therefore the correct fine being one million shillings. Therefore the learned magistrate cannot be faulted for the sentence of Sh. 300,000/= fine and imprisonment for 10 years.

In support of his submissions counsel for Appellant relied on the authority of **Chege – Vs – Republic Criminal Appeal 785 of 1982 in which the court said “plea of guilty must be taken cautiously and the record should clearly reveal that the facts were read out to the accused and that he understood the facts and knew what he was admitting to.”**

In that case some ingredients of the charge were not stated to him and on the facts of that case he

was not admitting that he was guilty to the offence. It is not the case here. The appellant was arrested at a bust stop intending to travel with the bhang. He knew what he was charged with when the offence was read to him.

The state has requested that the court do enhance the sentence of fine to one million instead of Sh. 300,000/= I find the trial magistrate had considered everything in passing the sentence and I do not find any reason to interfere.

Therefore the conviction and sentence are upheld. The appeal is dismissed. **Dated the 18th July 2005.**

J KHAMINWA

JUDGE