

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA
Criminal Appeal 155 of 2004

{Appeal against both conviction and sentence of the Senior Resident Magistrate's court at Butere in Criminal Case No.979 of 2004 (B. O. OCHIENG ESQ., RM)}

VICTOR ODHIAMBO NDUSO APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGEMENT

In his Petition of Appeal, the Appellant, Victor Odhiambo Nduso, proffered three grounds in which he submitted that the trial court failed to consider his mitigation before passing sentence and that the sentence meted out to him was excessive. He also submitted that his plea was unequivocal.

The appellant was convicted by the Resident Magistrate at Butere, in Cr.C. No.979/04, on his own plea of guilty. The offence was being in possession of Narcotic Drug contrary to section 3(1) as read with section 4(a) of Act 4 of 1994. He was fined Shs.60,000/= and in default to a term of five years in prison.

The record shows that the charge was read to the appellant in Kiswahili as were the facts and that the appellant admitted both as true following which he was convicted. He was given an opportunity to mitigate which he did. The trial court considered the mitigating factors before passing sentence. The court also considered why a severe sentence was called for. The sentence was in the discretion of the trial court.

The appellant did not show that the trial court exercised that discretion on the wrong principle or overlooked material factors nor did he show that the sentence was excessive in the circumstances. In the light of this, I find no merit in the appeal and I dismiss it.

Dated at Kakamega this 11th day of November, 2005.

G. B. M. KARIUKI
J U D G E