



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO. 1008 of 2002
(Appeal from Original Conviction and Sentence in Criminal Case No. 3833
of 2002 of the Senior Principal Magistrate's Court at Kibera)

BETTY AKINYI *alias* NEELA ACHIENG SIWO.....APPELLANT

versus

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant **BETTY AKINYI ALIAS NELEAH ACHIENG SIWO** was convicted for **TRAFFICKING IN DRUGS**, contrary to section 4(a) of the Narcotic Drugs and Psychotropic substances (Control) Act. She was also convicted for **BEING IN POSSESSION OF A FORGED PASSPORT**, contrary to section 13(1)(D) of the Immigration Act; and thirdly, she was convicted for **USING A PASSPORT ISSUED TO ANOTHER PERSON**, contrary to section 13(1) (f) of the Immigration Act.

Following her conviction, the appellant was sentenced to imprisonment for 5 years on count 1, and for 12 months for each of the other two counts. However, the learned trial Magistrate directed that the sentences run concurrently.

Thereafter, the appellant appealed against both conviction and sentence. But when the appeal came up for hearing, the appellant abandoned her appeal against conviction. This appeal was therefore only in relation to the sentence. It was submitted by the appellant that she was ailing. Also she complained that nobody goes to visit her at the prison. She lacks basic necessities, while in prison. And also because nobody visits her, the appellant did not have any information about her children.

During her stay in jail, she lost her mother, who died in April 2004.

The appellant says that she has reformed, and promises not to commit any other criminal offence. She informed the court that she had managed to secure a person who was ready to sponsor her to Vera. She was therefore asking the court to reduce her sentence, so that she could take up the chance which she had been given.

The appeal was opposed.

Learned State Counsel, Miss Gateru submitted that although the appellant looked remorseful, the offence was a serious one, and therefore called for a deterrent sentence. For those reasons, the respondent urged me to dismiss the appeal.

Having given due consideration to the submissions by the appellant, there are no grounds upon which

the sentence could be reduced, if the appeal was handled in the conventional manner. Even though the appellant was sick, that should only be a basis for an order, if one was needed, to enable her access medical treatment.

As regards the lack of basic essentials, the appellant must remember that prison was not meant to provide her with a comfortable lifestyle.

All said and done, the only thing that stands out, as said by Miss Gateru, is the fact that the Appellant appears to be very remorseful. But then again, I cannot reduce her sentence simply because the appellant was remorseful. In the circumstances, I decline to reduce the duration of the sentence meted out by the learned trial Magistrate.

However, in order to give the appellant the opportunity for a second chance in life, I do order that the sentence be varied, so that the appellant shall be able to serve the balance of the sentence either through community service or while on probation. Before I can make the final orders in that regard, I direct that a probation Report be filed in this court, within the next TEN (10) DAYS.

Accordingly, this case will be mentioned before me on 9th December 2004, for final orders.

Dated at Nairobi this 29th day of November 2004

FRED A. OCHIENG

AG. JUDGE