

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 300 OF 2003

**(From Original Conviction and sentence in criminal case no. 253 of 2003 of the
S.R.M's Magistrate's court at Kajiado)**

JOSIAH IRERI HARRISON APPELLANT
VERSUS
REPUBLICRESPONDENT

JUDGMENT

The appellant was charged with the offence of Trafficking in Narcotic Drug, contrary to section 4(a) of the Narcotic Drugs and Substrates Control Act No. 4 of 1994. He purported to plead guilty and was convicted and sentenced to 8 months imprisonment. He appeals against the conviction and sentence.

I have carefully considered the grounds of appeal and the arguments advanced by both Counsel. I am convinced that the plea of guilty recorded by the trial magistrate is not unequivocal. The appellant had used the words "It is True" to the particulars of the charge, read to him. The prosecutor then gave the facts, which would otherwise be sufficient in respect to this type of pleas.

However, when the prosecutor pointed out the purported drug possession of which the appellant was charged with, he failed to have it properly marked and then produced. Furthermore the purported drug was to be properly shown to have been, in this particular case, cannabis sativa. A certificate or report of the Government analyst was necessary to be produced as another exhibit to become part of the facts given or recorded by the prosecutor before the facts would be put to the appellant who would then accept them or deny them.

We do not know whether if such a course were followed, the appellant would still have accepted the facts as true and correct. As things stand no one knows what the purported drug produced before the trial magistrate was.

This court accordingly agrees with both Mr. Owino for the appellant and Mr. Mondah for the Attorney General that the plea of guilty recorded against the appellant was indeed unequivocal. For the above reasons, this appeal must succeed.

The conviction is quashed and the sentence of 8 months is set aside. The appellant is hereby set at liberty unless he is lawfully held in prison.

I have considered whether this is suitable case where a retrial would be ordered. I am of the view that it is not, as I also understand that the purported drugs have been destroyed.

Dated and delivered at Nairobi this 15th day of May, 2003.

D.A. ONYANCHA

JUDGE

