

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.212 OF 2001

(From Original Conviction and Sentence in Criminal Case No.2735 of 2000 of the Chief Magistrate's Court at Mombasa –Lydia Achode (Mrs) –P.M.)

JOSEPH JUMA OBONYO.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

JUDGMENT OF COURT

The Appellant was jointly charged with others with the offence of Trafficking in Narcotic Drugs contrary to Section 4(a) of the Narcotic and Psychotropic Substances Control Act No.4 of 1994. He was among others convicted and sentenced to a fine of Kshs. 1 million and in default 10 years imprisonment. Accused number three in the lower court, one Fahim Salim Swaleh who also was convicted and given a similar sentence, appealed to this court under High Court Criminal Appeal No.214 of 2001. The appeal was heard and determined by me in a judgment of this court dated 18th December, 2001.

In the said judgment the Appellant's appeal was allowed, the conviction quashed and the sentence set aside. The Appellant was as a result set at liberty unless held for lawful grounds. In the said appeal this court considered the totality of the evidence relied upon by the Trial Magistrate to convict and inter alia came to the conclusion that the admission of the Government analyst's report was wrong taking into account all the circumstances of the case and that it therefore prejudiced the appellant.

This court also therefrom concluded that without the said Government Analyst's report, the whole judgment of the Trial Magistrate would have no base. This court then concluded that under the said circumstances the case against the Accused persons who included the Appellant in this case, was not or could not be proved beyond a reasonable doubt. I have examined the grounds of Appellant's appeal herein and I have come to the conclusion that this appeal on similar grounds and reasoning as propounded in the said Criminal Appeal No.214 of 2001 of this court, must be allowed.

This is so because the facts of the case are similar, the evidence upon which conviction was based is the same. For those reasons this appeal is hereby allowed, the conviction quashed and the sentence set aside. The Appellant is hereby set at liberty forthwith unless otherwise lawfully held.

Dated and delivered at Mombasa this 14th day of March, 2002.

D. A. ONYANCHA

J U D G E