

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 400 OF 2001

GEORGE MUKURA APPELLANT

VERSUS

REPUBLIC PROSECUTOR

JUDGEMENT

The appellant was charged with another with the offence of Trafficking in Narcotic drugs contrary to section 4(a) of the Narcotic Drug and Psychotropic substances Control Act in count 1 and Being in Possession of Narcotic Drug contrary to section 3(1) of the Narcotic Drug and Psychotropic Substances Control Act in count II. The court at the end of the prosecution case ruled a prima facie case had not been established. Both accused gave unsworn evidence and the trial court convicted the appellant but acquitted his co-accused.

The brief evidence in the case from the record is that the appellant was employed as a caretaker of a building still under construction when he was approached by his co-accused to allow him store his luggage in the building as it was raining. Later police officers came and on searching the luggage found it contained Narcotic drugs. They arrested the co-accused also at the scene who they say had gone to collect the luggage and admitted he contained Narcotic drugs. At the hearing the co-accused identified the bag as his.

The evidence is however interesting in that the appellant said it was him who called the police on realizing the luggage contained narcotic drugs yet the officer who was said to have received the information denied the same.

The trial court did and correctly so observed that it was not clear how police knew the drugs were in the building. The appellant only appealed on sentence but the state counsel submitted that the evidence was not safe to warrant a conviction. The co-accused was acquitted.

I have read the record and find that there are a lot of loopholes in the evidence and the same was not safe to convict on. In the circumstances, the appeal is allowed the conviction set aside and sentence set aside. The appellant is to be set free forthwith unless held for other lawful reasons

Dated this 26th day of July 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE