

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 7 OF 2002

(From Original Conviction and Sentence in Criminal Case No. 1372 of 2001 of the Resident Magistrate's Court at Mombasa – R.M. Ndubi – R.M.)

SAID SHABAN MASHIMBA APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G E M E N T

The appellant was charged with another convicted and sentenced on 2 counts. On Count 1 they were charged under Section 3(1) as read with Section 2(b) of the Narcotic drugs and Psychotropic Substances Control Act and each sentenced to 9 months imprisonment and on Count II for Being in possession of utensils for use in connection with the smoking, inhaling or otherwise Injecting Narcotic drugs contrary to Section 5(1)(d) of the Narcotic drugs and psychotropic Substance Control Act and Sentenced to serve 4 years imprisonment each.

The appellant appealed on Sentence on the ground that he had now learned his lesson and wanted to go home to look after his wife and children and his mother.

The Court in passing sentence did note that the offence is serious and rampant in Mombasa and therefore need for a deterrent sentence. The state opposed the appeal on similar grounds.

I have considered the appellant's plea for leniency and his family.

However, the court takes judicial notice of the harm a parent like the appellant is likely to cause his family and especially the children when he is involved in the abuse of drugs. He should be an example to them. Also for his own good, the period in prison I hope will assist him clear off this bad habit. In the circumstances the court finds no reason to interfere with the sentence and appeal is Dismissed.

Dated and delivered at Mombasa this 23rd day of August, 2002..

P.M. TUTUI
COMMISSIONER OF ASSIZE.

