

was also cited but without much help here because there the Learned Trial Magistrate was criticised for not rejecting a charge that did not contain unlawfulness in its particulars for a charge under S.145 (i) Penal Code. Mr. Mutinda further told this court that as per the case of NILSON VS. R [1970] EA 602 the lower court did not inquire into the background of the appellant. That if it had done so it could have emerged that she was a mother of two with an insane husband, who was also charged with the same subject in a separate case. The punch line of the NILSSON case was that on a plea of guilty the trial court should reflect the same in the sentence. The Learned State Counsel was of the view that the plea of guilty was properly taken and that the conviction was in order. That the sentence need not be varied. It was lawful.

From the record, this court is not minded to hold that the plea was not unequivocal. At least Mr. Mutinda did not quarrel much with it on this account. Interpretation was in English Kikamba. Although the part regarding reading and explaining the charge was omitted in the typed record, the answer was recorded. Facts were narrated to the effect that the appellant was found with 60 rolls not in medical preparation. She admitted the facts, she was convicted and the prosecution said that even if the appellant would be treated as a first offender the quantity of the bhang was large. In mitigation the appellant said:

“I have been selling bhang because I have many children to look after including my sisters who is deceased.”

With that the Learned Trial Magistrate noted that bhang peddling was rampant and those who perpetrate it should be discouraged from spoiling the youth. So he meted out a deterrent sentence of 10 years.

At the hearing of this appeal Mr. Mutinda posited further in mitigation that the appellant's husband was insane and had also been charged in court with the same bhang.

Having considered all the foregoing this court is minded to dismiss this appeal in its entirety. Indeed the appellant boldly told the Learned Trial Magistrate that bhang – peddling was her business.

Judgement accordingly.

Delivered on 30th April 2001.

J. W. MWERA

JUDGE