

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

CRIMINAL APPEAL 1217 OF 1999

(From Original Conviction and Sentence in Criminal Case No.987 of 1999 of the Chief

Magistrate's Court at Nairobi):

SHEM KIMAIGA.....

.....APPELLANT

V E R S U S

REPUBLIC.....

.....RESPONDENT

J U D G M E N T

The appellant Shem Kimaige Moryas, was convicted of the offence of trafficking in Narcotic Drugs contrary to Section 4(a) psychotropic substances (control) Act No.4 of 1994. The particulars of the offence were that on the 20th day of April, 1999 at Jomo Kenyatta International Airport (JKIA), Nairobi traffickered in 630 grams of white heroine valued at Kshs.1,260,000/- in contravention of the said Act. Appellant denied the offence and the case went for full trial and at the end of which he was convicted of the offence of the learned Senior Resident Magistrate. He was then sentenced to serve 7 years imprisonment with hard labour and further fined Kshs.500,000/ or in default to serve a further 2 years imprisonment. His appeal to this court is against conviction and sentence.

There is no dispute that on the 20th of April, 1999 the Appellant arrived at JKIA aboard Flight No. EK417 Emirates Airline from Karachi – Pakistani through Dubai. According to his own testimony, he had traveled to Karachi Pakistan on the 14th April, 1999 to purchase Automobile parts and he traveled back on the 20th of April, 1991.

On arrival at the JKIA, he was immediately apprehended at the Customs desk by P.C. (w) Ngochi (PW1) acting on information received. He was taken to the Anti Narcotics Office at the Airport on suspicion that he was trafficking in drugs. His luggage was searched by PW1 but no drugs were found therein. PC Okumu (PW2) then searched his person and again no drugs were found on him. He was then suspected to have drugs in his bowel. He was detained by PW1 and PW2 and after 9½ hours at 10.30 p.m., he went to answer the call of nature in a special drug loo, this is a special toilet that sieves any foreign body except human waste and he emitted 25 pellets of white powder which was later confirmed by Government Analyst to be heroin (Ex 3). The Police Officers continued to detain him and while he was under supervision of P.C. Kiptanui at 10.30 a.m., he went to the drug loo and emitted 25 pellets of heroin wrapped in black cello tape (Ex 7). They continued to detain him and on the 22nd of April, 1999 at 7.30 a.m. while under the supervision of Cpl Odhiambo (P.W.3) and other officers he again went to the drug loo emitted 9 pellets of heroin. In total 59 pellets were removed and got 63 as stated in the charge sheet. P.C Okumu (P.W.2) took samples from each of the said pellets which were taken to the Government Analyst and upon examination by Itabil Omondi (PW4) he found that the substance was heroin. He produced his in evidence (Ex 5). Appellant was then charged with the offence of trafficking in drugs.

He denied the offence. He admitted that he was arrested upon arrival at the JKIA by Anti Narcotics

Drugs Officers who detained him for upto 7 days and later charged under an offence he had not committed. He maintained in the court below and before this court on Appeal that the drugs he was charged with belonged to another person but were planted on him by the Anti Narcotics Police Officers.

I have considered the evidence that was adduced in the court below as briefly summarized above. I have that PW1, PW2 and PW3 all testified how the Appellant who had been arrested on suspicion of trafficking in drugs on arrival at JKIA and was detained by the anti – Narcotics Police Officers late remitted a total of 59 pellets of heroin from his bowel on three different occasions when he went to the special loo to answer a call of nature. Appellant says that the said drugs had been planted on him by the said officers but I cannot find any reason for them to do so. I consider the defence of the Appellant was all a pack of lies where his by the learned trial magistrate.

I uphold the conviction of the Appellant and do hereby dismiss his appeal against conviction.

The sentence of 7 years imprisonment that was imposed on him was neither harsh nor manifestly excessive but in view of the small quantity of the drugs found on him, I will reduce the sentence to a 5 years imprisonment and a fine of Kshs.500,000/- or in default he serve a another 1 year imprisonment.

Dated and delivered at Nairobi this 18th day of December, 2000.

S.O. OGUK

JUDGE