



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL APPEAL NO. 7 OF 2018

KOMBO JUMANNE HAMISIAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. The appellant was charged with trafficking in narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substance (Control) Act No. 4 of 1994. Particulars were that on the 5th day of August, 2015 at around 12.00 hours at Namanga Custom Yard, Namanga Town within Kajiado County, jointly with others not before court he trafficked by conveying, a narcotic drug, namely. cannabis, to wit 1.131 kilograms with a market value of Kshs. 2.262.000 in motor vehicle registration No. T231 UAH /T777 AFA, make Scania, in contravention of the Act.

2. The appellant denied the charge and after a trial in which the prosecution called a total of 12 witnesses, and the appellant's sworn testimony in defence, he was convicted and sentenced to a fine of Kshs. 6,786,000, in default, to serve ten (10) years imprisonment.

3. The appellant was aggrieved and filed this appeal raising grounds that mainly focused on sentence. They were, that; this court grants him a reprieve and review sentence; that he stayed in remand for 18 months while the matter was being heard and that this court should invoke the provisions of section 333(2) of the Criminal Procedure Code and consider the time he spent in remand prison. He also stated that he is suffering from diabetic and blood pressure; that his health condition is currently bad and that he needs specialized medical attention.

4. When this appeal came up for hearing, the appellant abandoned the appeal on conviction and urged the court to reconsider sentence only. The prosecution counsel did not object to the appellant quest to abandon his appeal. On sentence, learned prosecution counsel left the issue of sentence at the discretion of the court, hence this judgment.

5. I have considered this appeal and read the trial court's record. The appellant was charged with trafficking in narcotic drugs, namely, cannabis, weighing about, 1,131 kg in a motor vehicle T231 AUH/T777 AFA. He went through a trial and was thereafter convicted. He was fined Kshs. 6,786,000 and in default, to serve a ten-year prison sentence. He was unable to pay the fine and he is, therefore, serving sentence.

6. The appellant abandoned his appeal and now prays that the court reconsiders sentence. Having abandoned the appeal on conviction, the trial judgment on conviction is hereby upheld.

7. Regarding sentence, the appellant was sentenced to a fine of Kshs. 6,786,000 or ten (10) years imprisonment in default. Section 4(a) under which he was charged and convicted provides as follows:

Any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable

(a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic or psychotropic substance whichever is greater, and, in addition, to imprisonment for life.

8. The trial court sentenced the appellant to a fine of Kshs 6,786,000, which was three times the value of the narcotic drugs he was arrested trafficking, and, in default, he was to serve ten (10) years imprisonment.

9. Sentencing is at the discretion of the trial court. An appellate court will not therefore readily interfere with exercise of that discretion. In ***Bernard Kimani Gacheru v Republic*** [2002] eKLR, the court stated with regard to sentence;

It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not

easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.

10. The sentence imposed by the trial court was a lawful and appropriate considering the quantity of the narcotic drugs the appellant was trafficking. I do not see reason to interfere with the trial court's exercise of discretion.

11. The record, however, shows that the appellant was arrested on 29th May 2016; was in remand while awaiting trial of his case and he was sentenced on 28th March 2017. The sentence of ten (10) years shall, therefore, run from 29th May 2016 when he was arrested.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAJIADO THIS 9TH DAY OF JULY, 2021.

E.C MWITA

JUDGE