



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

HIGH COURT CRIMINAL REVISION 186 OF 2020

(From original Conviction and Sentence in Criminal Case No.41 of 2020

of the Principal Magistrate's Court at Migwani)

TITUS MUTHUI MULLI.....APPELLANT/APPLICANT

VERSUS

REPUBLIC 'THROUGH' NGUUTANI POLICE STATION.....RESPONDENTS

R U L I N G

1. **Titus Muthui Muli**, the **Applicant** herein was charged *vide Migwani Principal Magistrate's Court Criminal Case No.41 of 2020* with the offence of trafficking in Narcotic Drugs contrary to **Section 4(a)** of the **Narcotic and Psychotropic Substance Control Act No.4 of 1994**.

2. The particulars of the offence as per the charge sheet presented to the trial court shows that the **Applicant** was on 15th July 2020 at around 6.20 am. at Nguutani within Kitui County aboard Motor Vehicle Registration No.KCM 020A, was found trafficking Narcotic Drugs to wit cannabis sativa (bhang) approximately 8kg with a street value of **kshs.80,000/=** in contravention of the law.

3. The **Applicant** pleaded guilty to the charge and he was convicted on his own plea of guilty and sentenced to pay a fine of **kshs.1 million** or serve **20 years** imprisonment in default.

4. The **Applicant** has now moved this court for revision of his conviction and sentence on the following grounds namely:-

i. **That there was an error apparent on the face of record in that the Order was made without due regard of law relating to plea taking and Criminal Procedure Practice and Evidence Act.**

ii. **That there was no Government Chemist Report on the substance produced in court.**

iii. **That the error is not a mere technicality.**

iv. **That the learned Magistrate did not allow the Applicant/Petitioner to seek for legal services and that the facts and sentence were read to him at the same time.**

v. **That the proceedings of the lower court are tainted with illegality and it calls for revision to correct the findings of the trial court.**

vi. **That the sentence meted out is too excessive.**

vii. **That the trial Magistrate erred in law by failing to analyse the evidence/facts read to the Applicant in order to form a just decision and that the omission occasioned a failure of justice.**

viii. **That the Applicant pleaded guilty due to misapprehension of the facts.**

ix. **That he pleaded guilty to unconfirmed substance.**

x. That he was not accorded an opportunity to dispute or explain the facts as presented by the prosecution.

xi. That the Constitutional right of the Applicant were violated.

5. This Court has Pursuant to the Provisions of **Section 362** of the **Criminal Procedure Code** called for the lower court file to wit **Migwani Principal Magistrate's Court Criminal Case No.41 of 2020**. I have perused through the proceedings of that court in order to satisfy myself on the correctness, legality, propriety of the conviction and sentence meted out against the **Applicant**.

6. The record of proceedings from the lower court indicates that the Applicant was presented to court on 16th July 2020 when the plea was taken. The record indicates that the charge was read in Kiswahili and the **Convict/Applicant** pleaded "*Ni ukweli*" where upon the trial Court entered a plea of guilty. The facts of the charge were deferred to 23rd July, 2020 when the **Applicant** was produced in court. The trial court for good measure read the charges afresh in Kiswahili to the **Applicant** upon which he pleaded guilty. The facts were read over to him in Kiswahili, a language the **Applicant** stated he understood and again he pleaded guilty. This is what he pleaded;

"I have understood the facts. They are correct. I was found trafficking the dry plant material which is cannabis commonly known as bhang."

7. In the face of the manner in which the plea was taken this court finds that the plea taken was unequivocal. The **Applicant** expressly admitted to the charge and was convicted accordingly.

8. The **Applicant** was charged and convicted of trafficking in **narcotic** drugs contrary to **Section 4 of Narcotic Drugs and Psychotropic Substances (control) Act** 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 and psychotropic substance shall be guilty of an offence 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 drug or psychotropic substance whichever is the greater, and, in addition to imprisonment for life.

9. The **Applicant** was sentenced to a fine of kshs. One Million or 20 years imprisonment in default. Going by the above express Provisions in the law, the sentence meted out though harsh cannot be challenged on its legality or correctness. The sentence is provided by law.

10. The **Applicant** unequivocally pleaded that he was trafficking 8 kg of bhang (cannabis sativa) which is a narcotic drug as per definition given under **Section 2 (i) of Narcotic Drugs and Psychotropic Substances (control) Act**. He now faults the trial court for not subjecting the substance for forensic analysis at the Government Forensic analysis at the Government Chemist. But after admitting and describing the bhang he was trafficking, there was absolutely no obligation on the part of the prosecution or the trial court to call for a report from Government Chemist.

11. The 8 kilograms bhang was tendered in evidence on P. Ex.1 and this court finds the same regular and proper. The Applicant may have been taken aback by the penalty prescribed by law either because of lack of awareness or recklessness. Either way he had no excuse to deal with prohibited substance because of the adverse effects on the society. That is why parliament in its wisdom carried out legislative measure to mitigate or check the vice in the society. The conviction was on the basis of a own plea of guilty and there was no need to first obtain any further proof that the substance found on the Applicant was bhang. There was no further need of scientific or any other proof because of the admission by **Applicant**.

12. The **Applicant** claims that the proceedings in that trial court shows that the taking of plea infringed on his constitutional rights but he has failed to demonstrate how his rights under Article 49 and 50 as an accused person were infringed and by whom. He has failed to pin point with specificity the part of the proceedings which on the face of it violated any of his constitutional rights. It is not enough to just make general statement that his rights were violated without specifying which right specifically and who violated the same.

13. The **Applicant** has faulted the trial Magistrate for failing to allow him get legal services but he did not seek for legal services when he was first produced for plea on 16th July, 2020 and on the 2nd time on 23rd July, 2020 when the facts were read. This court takes the position that the Applicant had sufficient opportunity to brood over the offence he had committed and the attendant consequences. He chose to plead willingly without any inducement or force of any kind. He cannot possibly turn back and claim in this application that he was not accorded the opportunity to dispute or explain the facts read over to him.

14. The **Applicant** states that the trial magistrate erred in analysis of evidence or facts presented in order to make an informed decision and that the sentence is excessive. However under **Section 364 (5)** of the **Criminal Procedure Code**, where an appeal lies from a finding or sentence, this court sitting on revision cannot entertain the same because the law does not allow the same. A party aggrieved by finding or sentence is at liberty to appeal and this court in the exercise of its appellate jurisdiction can entertain and determine the same. But looking at the record of proceedings I doubt whether the Applicant could have made any headway because of his unequivocal plea of guilty and express provisions of the statute.

15. In the end this court finds no merit in this application for revision dated 30th July 2020. The same is disallowed.

Dated, Signed and Delivered at Kitui this 13th day of October, 2020.

R. K. LIMO

JUDGE