

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL APPEAL NO 3 OF 2018

AFLAH ATHMAN MUKURI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment and sentencing of Hon. Njeri Thuku Principal Magistrate in Lamu Criminal Case No. 344 of 2016 delivered on 12/1/2017)

JUDGMENT

1. The Appellant Aflah Athman Mukuri was charged with the offence of Trafficking in narcotic drug contrary to **section 4 (a) Narcotic Drugs and Psychotropic Substances Control Act no. 4 of 1994**. The particulars of the offence were that on July 29, 2016 at Langoni Location in Lamu West Sub-County within Lamu County trafficked by selling narcotic drugs namely heroin to weight 0.2grams with an estimated market value of Kshs. 300/= and cash money worth 2,000/= in different denominations believed to be proceeds of sale recovered from him in contravention to the said Act.

2. At the conclusion of the trial, the court found the Appellant guilty of possession and not trafficking and sentenced him to serve 10 years imprisonment. In sentencing the Appellant, the court noted that he had two previous convictions and was serving two sentences. The sentence for the present case was pronounced on 12/1/2016.

3. This appeal is against sentence only. The Appellant filed his amended grounds of appeal on 23/10/2018 along with written submissions. His grounds are that the sentence was not appropriate; that the trial magistrate did not consider that he was remorseful and that he begged for mercy. His submissions on the other hand are to the effect that he regretted the offence, and was remorseful, and; that the sentence was too harsh. He pleaded for mercy while likening his circumstances to those of the prodigal son in the Bible to underscore the fact that he had changed and was repentant.

4. At the hearing of the appeal on 19/11/2018, the Appellant stated that he had nothing to add to his written submissions. Mr. Kasyoka learned counsel for the Respondent sought time to file submissions but failed to do so by the set time allowed by the court. This appeal has therefore proceeded without the Respondent's submissions.

5. I have considered the Appellant's grounds of appeal and submissions. The grounds of appeal revolve around the one issue that the sentence was harsh while the submissions amount to mitigation. I have noted that the Appellant was serving two sentences for cases he has appealed and whose judgments are pending before this court. In the present case however the appellant is satisfied with the conviction and indeed has made material admission that he was ready to turn away from the unlawful business of dealing in any way with narcotic drugs. The Appellant is no doubt a repeat offender deserving of a punitive and exemplary sentence. However in the circumstances of this case I am prepared to temper justice with mercy. I see the Appellant more as a hapless victim of the drug menace crying out for rehabilitation.

6. I substitute the Appellant's 10 years imprisonment with a 3 year probation term under strict supervision of the probation officer and who shall endeavor to admit the Appellant in a charitable rehabilitation facility. For clarity, the 3 years' probation sentence shall run subsequent to the completion of any imprisonment term that the Appellant is serving for the earlier convictions.

Judgment delivered dated and Signed at Garsen on 13th day of March, 2019.

.....

R.LAGAT KORIR

JUDGE

In the presence of

..... Court Assistant`

.....Appellant

.....For the Respondent