



**Kelvin v Republic (Criminal Revision 1136 of 2018)
[2019] KEHC 12500 (KLR) (Crim) (22 May 2019) (Ruling)**

Wilson Kelvin v Republic [2019] eKLR

Neutral citation: [2019] KEHC 12500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL REVISION 1136 OF 2018

GWN MACHARIA, J

MAY 22, 2019

BETWEEN

WILSON KELVIN APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged before the Chief Magistrate's Court in JKIA with trafficking in psychotropic substances contrary to Section 4(a) of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#) No. 4 of 1994. It was alleged that on the 31st day of October, 2018 at round 1610 hours, at Standard Gauge Railway Station Syokimau within Machakos County, jointly with others not before court unlawfully trafficked a psychotropic substance namely Methamphetamine (MDMA) to wit, 0.93 grams concealed in 3 (three) capsules with a market value of Kshs. 7,440/= in contravention of the said [Act](#).
2. In the alternative, he was charged with being in possession of a psychotropic substance contrary to Section 4(a) of the [Narcotic Drugs and Psychotropic Substance \(Control\) Act](#) No. 4 of 1994 in that he was found in possession of 0.93 grams of Methamphetamine (MDMA) concealed in three (3) capsules with a market value of Kshs. 7,440/= in contravention of the said Act.
3. The Applicant was convicted on his own plea of guilty in the main count. He was sentenced to serve four (4) years imprisonment and in addition pay a fine of Kshs. 20,000/= in default serve six (6) months imprisonment. In addition, the court ordered that upon completing the sentence, he shall be repatriated to his home country, Uganda. He was accorded a right of appeal within 14 days.



4. By a Notice of Motion application dated 6/12/2018, the Applicant seeks a revision of the sentence, to have the same reduced or in the alternative the sentence be computed to the period served and order a repatriation to Uganda.
5. Mr. Okerosi for the Applicant urged the court to consider that the Applicant took care of his elderly father, that at the time of plea he was intoxicated and may not have appreciated the impact of the sentence imposed, that he was a first offender and the Respondent would not be prejudiced in any way.
6. Mr. Momanyi for the Respondent in opposing the application submitted that plea was taken when the Applicant was sober. That initially when he was presented in court, he was drunk and the court had to defer the plea on another date to allow the Applicant to be sober. He submitted that in passing the sentence, the court considered that the Applicant was a first offender and took care of his elderly father. Furthermore, the plea was unequivocal.
7. In response, Mr. Okerosi conceded that the plea was unequivocal but added that it was taken when he was drunk. It was his view that the sentence imposed was manifestly excessive and urged the court to revise it downwards.
8. This is a revision application in which case the court would only consider the propriety or illegality or correctness of the sentence passed. Mr. Okerosi in submitting that the plea was unequivocal was an admission that it was taken in the right manner and the correct procedure was followed. His reversal in submitting that plea was taken when the Applicant was drunk beat logic and was self-conflicting. If that were the case, the redress lay in an appeal as opposed to a revision application.
9. Be that as it may, the original trial court record of proceedings which this court had called for is a testimony that when the Applicant was first presented in court on 2/11/2018, the court noted that he looked drunk and plea had to be deferred to 5/11/2018. The Applicant was represented by a counsel on 8/11/2018 when facts were read. There was no objection that the plea process began unprocedurally. My glimpse of the proceedings attests that the plea was unequivocal.
10. In sentencing, the court took into account that the Applicant was a first offender and took care of his elderly father. In passing the sentence, the court did underscore the fact that the Applicant had crossed the border from Kampala through Mombasa to bring in a narcotic drug. The court thus, was of the view that a deterrent sentence was necessary.
11. Section 4(a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 provides that:
 - “Any person who traffics in any narcotics drugs or psychotropic substances or any substance represented or held out 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 drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life.”
12. The above provision gives the trial court the discretion to impose such sentence as is reasonable having regard to sentencing guidelines. The only part of the sentence the court may not vary is the fine premised on the value of the drug. However, the default sentence thereof must accord with Section 28(2) of the *Penal Code*. Bearing in mind that the Applicant was a first offender, it is my view that the sentence of four years was excessive and harsh. The value of the drug was also not too high to



attract the penalty meted. I differ though with counsel for the Applicant that the Applicant should be repatriated in lieu of the remainder of the sentence. Drug trafficking is a serious offence which must be visited with deterrent measures. He must be punished in such a manner that he feels he has shouldered the responsibility for the mistake he made. Allowing him to go back to Uganda without serving a punishment gives a green card to try a second time to sneak in narcotic drugs which are ruining the youth and a large proportion of our population.

13. Having made the above observations, I partially allow the application by varying the first limb of the sentence. I set aside the four years jail term and substitute it with a one year jail term. The Applicant shall in addition pay the fine of Ksh. 20,000/ in default serve six months imprisonment. He shall thereafter be repatriated to Uganda upon completion of the sentence.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MAY, 2019.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. Mr. Ondieki for the Appellant.
2. Ms. Nyauncho for the Respondent.

