



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

HCRA NO. 51 OF 2015

1. STEPHEN OLUOCH OMONDI.....1ST APPELLANT

2. JESSY OGOLLA KASULE.....2ND APPELLANT

3. EDWIN MULI NZOMO.....3RD APPELLANT

VERSUS

REPUBLIC.....REPOUDENT

J U D G M E N T

1. The Appellants No. 1, 2 and 3 were charged with offence of **Possession of Narcotic drugs** Contrary to **Section 3 (1) (2) of Narcotic Drugs Contrary to Section 3(1) (2) (a) of the Narcotic drugs and Psychotropic Substances Control Act. No. 4 of 1994**. Particulars being that on **16th day of December 2014** at **Ekisaya area** at around **6a.m.**, **Mutitu** Sub-County within **Kitui County**, jointly were found in possession of **Narcotic drugs** namely **Cannabis Sativa** to wit 500 grammes of street value of **Kshs. 300/=** which was not in any form of medical preparation in contravention of the act.

2. They were arrested same 16/12/2014 and taken to court on 17/12/2014 for plea.

3. They pleaded guilty and facts were read as follows:-

“On 16/12/2014 at Ekisaya at about 6 p.m, motor vehicle KAV 065X Saloon was spotted within Ekisaya. The motor vehicle was suspected by public from outlook of the occupants. The motor vehicle occupants were tracked by anti-stock theft police officers. The police officer arrested the 3 Accused persons shortly thereafter. The police conducted search on the accused, and recovered ½ kg cannabis from the accused. The same is in court and I wish to produce same”.

4. The same is not recorded as produced nor stated whether it was confirmed to be Cannabis Sativa forensically.

5. The accused were asked whether facts were correct and they said **“the facts were correct”** thus convicted on own plea of guilty.

6. The prosecutor stated that they were first offenders. Only 1st accused sought leniency - mitigation. The court ordered a sentence of 18 months and drugs to be destroyed.

7. Mr. Mamba State Counsel confirmed drugs were destroyed.

8. They were eventually released on a bond by trial court on 16/1/2015 after being in custody for over 32 days.

9. Meanwhile, they filled Appeal on 29/12/2014 on the grounds that the charges were defective, there was un clarity in which language charges were read and translated, that the chemical analyst/government chemist report was not availed to confirm drugs were as under the provisions cited in charge, that sentence was excessive and also on procedural aspect in that the Magistrate who took plea is not the one who sentenced them.

10. The Court notes that interpretation is stated to be English/Kiswahili/Kikamba so which one among the 3 was used? Suppose Kikamba was used. Taking Judicial notice of the names and possibility of not being of Kamba ethnic extraction would they have understood the language?.

11. The charge sheet set time of possession to be 6am but the facts indicates 6pm.

12. The Government chemist report on the substance alleged to be drug was not produced or availed to court to confirm the same in terms of the law.

13. I was to order a retrial but after being informed by the State Counsel that drugs may not be available as they were destroyed, I have no option but to apply this courts discretion and quash conviction and set aside the sentences. This is also strengthened by the fact that the recovery is not indicated as to who among the 3 had the drugs where same were recovered either in motor vehicle or outside.

14. The appellants were unrepresented and may not have understood the issues now being raised in Petition of Appeal by their Counsel at the time of plea.

15. Thus the court allows the Appeal for only Appellant No. 1 and 2 herein and quashes Conviction and sets aside the sentences.

16. It is so ordered.

Dated, Signed and delivered at Kitui this 18th day of October 2019

C. KARIUKI

JUDGE