



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.11 OF 2017**

**FRANCO OUMA SANDE.....APPLICANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Franco Ouma Sande was charged with the offence of **trafficking in narcotic drugs** contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances Control Act**. The particulars of the offence were that on 24<sup>th</sup> April 2011 at City Market in Nairobi County, the Applicant jointly with others not before court, trafficked 2.651 kilograms of cocaine, a narcotic drug with the estimated market value of Kshs.9.6 million in contravention of the said **Act**. The Applicant pleaded not guilty to the charge. After full trial, he was found guilty as charged. He was sentenced to serve four (4) years imprisonment. The Applicant has not appealed against conviction. He has filed the present application seeking a reduction of custodial sentence.

In the application, the Applicant states that he was in remand custody for eight (8) months during trial. This period has not been taken into account when he was sentenced by the trial court. He told the court that he had reformed and would not be a repeat offender. He had learned several trades while in prison. He had qualified as a career coach and peer counsellor. He has been of good behaviour while in prison. He produced a testimonial issued by the prisons authorities confirming the fact. He pleaded with the court to exercise leniency on him. Ms. Sigei for the State opposed the application. She stated that the sentence imposed upon the Applicant was extremely lenient taking into account the amount of narcotic drugs that was found in the Applicant's possession. She urged the court not to interfere with the sentence.

When the trial magistrate sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant or that the sentence was illegal. In the present application, it was clear to the court that the Applicant was sentenced by the trial magistrate to serve an extremely lenient custodial sentence.

Under **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances Control Act**, upon conviction, the Applicant should have been sentenced to serve imprisonment for a life. In addition, he was supposed to pay as fine three (3) times the market value of the narcotic drugs that were found in his possession. As it were, the Applicant was sentenced to serve a period of only four years imprisonment. Although this sentence was on the face of it extremely lenient, this court will not interfere with the same by enhancing it. If the State had made an application for the court to enhance the sentence, this court would have been inclined to enhance the sentence. The Applicant should therefore thank his lucky stars and continue riding on his luck.

In the premises therefore, this court finds no merit with the Applicant's application for reduction of custodial sentence. The Applicant shall serve the custodial sentence that was imposed by the trial magistrate. It is so ordered.

**DATED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MARCH 2017**

**L. KIMARU**

**JUDGE**