



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 108 OF 2011

PETER MUTINDA JUMANNE..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From Original Conviction and Sentence in Criminal Case No. 1834 of 2010 of the Chief Magistrate's Court at Mombasa – Hon. Michieka - RM)

JUDGMENT

The appellant was Convicted and Sentenced to ten (10) years imprisonment and in addition Ksh. 1 million in default for the offence of trafficking in narcotic drugs contrary to section 4(a) of the Narcotic Drugs and psychotropic substances Control No. 4 of 1994.

The particulars being that:-

“On the 15th day of June, 2010 at Magongo area Changamwe Location Mombasa County he was found trafficking by conveying 10 kilogrammes of Cannabis Sativa of the value of Ksh. 10,000/= in contravention of the said Act”.

The brief facts of this case are:

“On 14th June, 2010 at about 1:30am police officers PC Kandie (PW 1) PC Maina (PW 2) and PC Muela Were on patrol duties within Magongo area when they met the Accused (Appellant) who was standing by the roadside near “Sisi kwa sisi”. He was talking on his mobile phone and beside him was a luggage.

They interrogated him and decided to check the contents of the luggage which was a black suitcase. Inside it was a black suitcase. Inside it was a black manila bag, a Rubber band and inside the manila bag were dry plant material which they suspected to be Cannabis Sativa. They arrested him and took him to police station where further investigations were carried out. The investigating officer one PC Patrick Mugira upon receipt of the exhibits forwarded them to the Government chemist for analysis. Thereafter he received the report which was later produced in Court as exhibits by the Government analyst.

In his defence the Accused denied having been found with cannabis sativa as alleged, stating that he had arrived from Taveta at about 5:00 am when three police officers found him at a bus stop and started interrogating him. He was carrying a small bag containing his clothes but because he did not have Ksh. 2,000/= which they had demanded from him they decided to arrest him and later charged him with this offence. Section 74A of the narcotic drugs and psychotropic substances Act provides,

“(1) Where any narcotic drug or psychotropic substance has been seized and is to be used in evidence, the commissioner of police and the director of medical officer restrictively authorized in writing by either of them for the purposes of this Act, shall, in the presence of where practicable

(a) The person intended to be charged in relation to the drugs

(b) A designated analyst

(c) The Advocate, if any, representing the Accused and

(d) The analyst, if any, appointed by the Accused person, weigh the whole amount seized, and thereafter the designated analyst shall taken and weigh one or more samples of such narcotic drug or psychotropic substance and take away such sample or samples for the purpose of analyzing and identifying the same.

(2) After analyzing and identification of the samples taken under subsection (1) the same shall be returned to the authorized officers together with the designated analysts certificates for production at the trial of the accused person.

(3) Upon receipt of the designated analysts certificates and the samples analysed in accordance with the foregoing subsections, the authorized officers shall, where the drug is found to be a narcotic drug or psychotropic substance within the meaning of this act arrange with a magistrate for the immediate destruction by such means as shall be deemed appropriate of the whole amount seized (less the sample.

(4) The destruction of the drugs and psychotropic substance ordered under subsection (3) shall be carried out by the authorized officers in the presence of the magistrate and the accused person, where practicable and his advocate (if any) and thereafter the magistrate shall sign a certificate in the prescribed form relating to the destruction.

(5) The production in court by either one of the authorized officers at the trial of an accused person of the samples together with the designated analysts certificate and the magistrates certificate of destruction shall be conclusive proof as to the nature and quantity of the narcotic drug or psychotropic substance concerned and of hate fact of its destruction in accordance with the provisions of this section.

(6) The provisions of this section shall apply to all proceedings commenced on or after the 7th day of June 2002.

A perusal of the charge sheet does show that the offence was committed on the 15th day of June 2010. This was more than eight years after the coming into operation of section 74 ‘A’ of the Act. I have perused the records of proceedings and I am satisfied that the provisions of Section 74A of the Act were not complied with. Compliance is mandatory under Section 74A (6) of the Act.

I accordingly find that this appeal has merit and its allowed. The appellant is set at liberty unless otherwise lawfully held.

Judgment delivered, dated and signed in open court this 13th day of **October 2015**.

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M. MUYA

JUDGE

13/10/2015

In the presence of:

Learned counsel for the state

The Appellant

Court Assistant

M. MUYA

JUDGE

13/10/2015