



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 28 OF 2011

ALI KASSIM APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No.3126 of 2010 of the Chief Magistrate's Court at Mombasa – Hon. Mutoka - CM)

JUDGMENT

ALI KASSIM hereinafter referred to as the appellant herein was Convicted and Sentenced to serve twenty (20) years imprisonment and to pay a fine of Ksh. 1 million.

The Appellant was charged and Convicted on two Counts. The first Count was that of trafficking in Narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act.

The second Count was that of being in possession of Narcotic drugs contrary to section 3(1) as read with section 2(a) of the Narcotic drugs and Psychotropic Substances.

The particular in the first Count are that:-

“On the 9th day of October, 2010 at Bomani area Likoni – Narcotic drugs to wit 161 satchets of Heroin with a street value of Kshs. 48,300/= by way of selling in contravention of he said Act”.

The particulars in the second Count are that:-

“On the same date and area he was found in possession of Narcotic drugs to wit one cut roll of Cannabis Sativa with a street value of Ksh. 50/= in contravention of the said Act”.

The learned trial magistrate in her Judgment (at page 14 line 11) found the Accused guilty as charged on both Counts and Convicted the appellant accordingly. She Sentenced the Appellant to serve twenty (20) years imprisonment and also ordered him to pay a fine of Ksh. 1 million.

The trial magistrate had Convicted the Accused on two Counts. The first one for trafficking drugs contrary to section 4(a) of the Act and the second Count of possession of Narcotic drugs contrary to section 3(1) as read with section 2(a) of the Act.

She did not indicate whether the Sentence was in respect of the first or second Count.

Section 169(2) of the Criminal Procedure Code provides,

“In the case of Conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which the Accused person is convicted and the punishment to which he is Sentenced”.

I am in agreement with Mr. Jami prosecuting Counsel in his contention that the Sentence against the Appellant was an ***Omnibus*** one and that the provisions of section 169 of the Criminal Procedure Code were not adhered to. I accordingly reverse the Conviction and sentence and order that the Appellant be retried by a Court of competent jurisdiction.

The case to be mentioned before the Chief Magistrate Mombasa for further directions on **18th November, 2014.**

Judgment delivered dated and signed this **5th** day of **November, 2014.**

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M. MUYA

JUDGE

5TH NOVEMBER, 2014

In open Court in the presence of:-

Mr. Masita for the prosecution

Appellant himself

Court clerk Musundi