

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.23 OF 2012

(An Appeal arising out of the conviction and sentence of F. MUNYI - RM delivered on 26th June 2011 in Nairobi CM. CR. Case No.1875 of 2010)

ROBERT KAMANGA NJIHIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, Robert Kamanga Njihia was charged with three (3) counts of **trafficking in psychotropic substances** contrary to **Section 4(a)** of the **Narcotic and Psychotropic Substances Control Act, 1994**. The particulars of the offences were that on 23rd August 2010 at 12 noon at Majengo Village in Thika, the Appellant, jointly with others not before court, trafficked by selling psychotropic substances namely diazepam, prazepam, benshexol and cannabis sativa without a prescription from a doctor or a medical practitioner. When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was found guilty of two (2) of the three (3) counts. In respect of the first count, he was sentenced to a fine of Kshs.1 million and in addition to serve five (5) years imprisonment. In default of paying the fine, he was ordered to serve another one (1) year in prison. In respect of the other count, he was also fined the sum of Kshs.1 million and in addition to serve five (5) years imprisonment. If the Appellant defaulted in paying the fine, he was ordered to serve a further term of one (1) year in prison. The Appellant was aggrieved by his sentence and has filed an appeal to this court.

In his petition of appeal, which is in form of mitigation, the Appellant pleaded with the court for a reduction of sentence. He stated that he was remorseful and had been lured into committing the offence due to bad company. He had learnt his lesson in the three (3) years that he has been in prison. He undertook not to repeat the offence if the court favourably considered his appeal. He had learnt that crime does not pay. During the hearing of the appeal, the Appellant reiterated the contents of his petition of appeal. He stated that he had a child who was currently staying with his mother. He requested to be released so that he could take care of his child and his mother. Ms. Maina for the State did not oppose the Appellant's plea for reduction of sentence. She was of the view that the three (3) years that the Appellant had served was sufficient punishment.

This court has considered the facts of this appeal. As stated earlier, the Appellant is not appealing against conviction. Indeed, he admits that he committed the offences. He pleads with the court to reduce his sentence. He states that he has reformed in the period that he has been in prison. This court takes judicial notice that it is the activities of the likes of the Appellant that puts the lives of Kenyans, particularly the youth at risk. The drug menace has become a cancer in the society that requires concerted effort by all concerned to eliminate. The Appellant admits that he was a drug peddler. He was not peddling the usual drugs found within the country. He was peddling drugs imported to this country by drug smugglers. He was part of the international ring that promotes international crime.

Although the Appellant has stated that he is remorseful and has learnt his lesson, this court is not persuaded that the sentence imposed by the trial court were unlawful. The court will maintain the sentences save that the two five (5) year custodial terms shall run concurrently instead of consecutively.

The Appellant's sentence shall therefore run for five (5) years with effect from the date the Appellant was convicted by the trial court. Otherwise, the Appellant's appeal lacks merit on other counts. It is so ordered.

DATED AT NAIROBI THIS 3RD DAY OF DECEMBER 2014

L. KIMARU

JUDGE