

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: OMOLO, AKIWUMI & LAKHA)

CRIMINAL APPEAL NO.38 OF 1997

BETWEEN

1. AHMED SALIM

2. ABDULRAHMAN MOHAMED.....APPELLANTS

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction, judgment or as the case may be of
the High court of Kenya at Mombasa (Mr. Justice Waki)
dated 9th May, 1997

in

H.C.CR.A NO. 340 & 341 OF 1996

JUDGEMENT OF THE COURT

This is an appeal against conviction of the appellants of the offence of being in possession of Neurotics Drugs contrary to section 3(1) of the Neurotics and Psychotropic Substance (Control) Act No.4/94 as read with Sub-section 2(a) and 2(b) of the said Act.

The drugs in question were found in the house which the appellants had visited. The owner of the house and another who were also arrested with the appellants but released and never called to testify at the trial. This raises the inevitable presumption that witnesses if called would have given unfavourable evidence against the prosecution. This failure on the part of the prosecution was fatal to conviction. There is no evidence sufficient to raise any presumption of possession against the appellants. We are satisfied that the conviction against the appellant cannot be satisfied. The appeal is accordingly allowed; conviction quashed and sentence set aside. The appellants are released unless otherwise lawfully held.

Dated and delivered at Mombasa this 14th day of July, 1997.

R.S.C. OMOLO

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JUDGE OF APPEAL

A.M. AKIWUMI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL