

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO. 457 OF 1993

DAVID DANNY LEGAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 1060 of the Principal Magistrate's Court at Malindi - J R Karanja, Esq - R M)

JUDGMENT

The appellant, David Danny Ligai, was convicted after trial by the learned Resident Magistrate, Malindi of the offence of being in possession of 10 grams of diacetylmorphine (heroin) otherwise than in accordance with the provisions of the Dangerous Drugs Act contrary to rule 9 of the Dangerous Drugs Rules as read with section 14 (1) (c) of the Dangerous Drugs Act (cap 245 Laws of Kenya) punishable by section 18 (2) of the same Act as ammended by the Statute Laws Miscellaneous Ammendment Act No 11 of 1983. (This Act has since been repealed). Upon his conviction, he was sentenced to serve 2 years imprisonment. He now appeals to this Court against his conviction and sentence.

Briefly, the prosecution case was that on the 15th day of September, 1993 at about 6 pm Sgt Malat Ayot (PW1) and PC Roiman Sadara (PW2) both of the Anti-Nacortc Unit of the CID based at Malindi acting on a tip-off, laid an ambush for the appellant along the Government Road in Malindi. They stopped him as he was proceeding to Scorpion Villa Hotel. On searching him, both police officers and from his pocket, they found him with what they suspected to be some drugs which on examination by the Government Analyst was found to be heroin (Ex 2). He was subsequently charged. The said drug and the cloth containing the pocket where it was found were produced in evidence (Ex1 & 2).

The defence of the appellant which he repeated in his petition of appeal was that at the time he was ambushed by the police officers, he was in company of another person who was his friend. He went on to say that it was from the person of the said man that the police officers found the drug.

Learned trial magistrate considered the evidence before him and believed the evidence of the two police officers (PW1 and PW2) that it was from the person of the appellant and not any other person that they had found the said drugs. These police officers had never known the appellant before. There was no evidence of any grudge between them and the appellant or anything that could suggest that they had motive to plant the evidence possession of the said drug on the appellant. Learned trial magistrate thought that they were honest witnesses and believed them.

I find no reason for upsetting the findings of fact made by the learned trial magistrate based largely on the credibility of the witnesses. I concur with his findings that there was good and reliable evidence proving beyond doubt that the appellant was the one who was actually found in possession of the drugs in question. The said drugs were duly examined and found to be diacetylmorphine (heroin) which was actually a drug within the meaning of the said Act which was then in force. I find no merit on this appeal against conviction which I hereby dismiss.

As for sentence, I am satisfied that the 2 years imprisonment that was imposed was on the lenient side in all circumstances and there is no basis upon which this Court could interfere.

In the result, the appeal against both conviction and sentence is dismissed.

Dated and Delivered at Mombasa this 26th day of September 1994.

S.O.OGUK

JUDGE