

REPUBLIC OF KENYA

Michele v Republic

High Court, at Mombasa

Omolo J

August 28, 1992,

Omolo J delivered the following Judgment.

The Appellant Cottarde Michele, an Italian National, appeared before a District Magistrate at Mombasa charged with the offence of being in possession of cannabis sativa (bhang) contrary to Section 10(e) of the Dangerous Drugs Act as punishable by Section 10(2) of the same Act. The particulars of the charge against him were that on the 25th August 1992 at about 3 a.m. at Moi International Airport in Mombasa, the Appellant was found in possession of one cigarette of bhang which was not in medicinal form. The charge was apparently read to the Appellant in Italian and the Magistrate records him as saying:-

“Plead Guilty.

That, as I have said repeatedly, is not a sufficient plea of guilty. The facts were then stated to the Magistrate and those facts were that – on the 25th August 1992 at around 3 a.m. Police Officers searched the appellant and recovered, I quote: “one cigarette” which was kept in a Malboro packet. The officers took possession of the “Exhibit”, arrested the accused and escorted him to the Police Station where he was charged with the present offence. The bhang is kept in the station and may be produced if need be. It is not clear whether the bhang was the cigarette and as I have repeatedly said in matters raised in pleas, the facts should leave no ambiguity and the accused person should be left in no doubt as to what is alleged against him. It is possible to say from the facts on record that the appellant was found with a Malboro cigarette and there was no averment by the prosecution that the contents of the Malboro cigarette were examined and found to be bhang. Nor was it alleged that the police officers who arrested the appellant with the cigarette had experience and knew what is and what is not bhang. The proceedings were conducted in a language which the Magistrate himself did not understand and in these circumstances, it was vital that the facts left no ambiguity as to what was being alleged against the Appellant. Mr. Metho for the Republic does not support the conviction of the Appellant. I quash the conviction, set aside the sentence of two months’ imprisonment imposed on the Appellant and order that the Appellant be released from prison forthwith unless he is otherwise lawfully held.