

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL APPEAL NO 270 OF 1989

OREMO..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 1254 of 1989 of the Resident Magistrate's Court at Siaya, Alex Anambo Esq RM)

JUDGMENT

The appellant was taken to have pleaded guilty to two counts, one stated to be transporting cannabis sativa, contrary to section 11 as punishable by section 18(2)(a) of the Dangerous Drugs Act and a second one of being in possession of cannabis sativa, contrary to section 10(e) as punishable by section 18(2)(a) of the same Act. There is clearly no offence called transporting cannabis sativa under section 11 of the Dangerous Drugs Act and the appellant was charged with a non-existence offence under that section. I quash the conviction recorded against him on that count and set aside the sentence imposed thereon.

As regards count 2, when the charge was read to the appellant he is recorded as saying: "It is true". I have repeatedly drawn to the attention of the magistrates that the sentence "It is true" does not really amount to a plea of guilty. The facts were then stated by the prosecutor to the magistrate and at the end of those facts, the appellant told the magistrate he was not aware that what was being carried in the vehicle was bhang. The magistrate should have entered a plea of not guilty and the case should have gone for trial. Possession of bhang must involve knowledge that the bhang is there and if the appellant told the magistrate he was not aware what he was carrying was bhang, then he was obviously pleading not guilty. The magistrate should have entered a plea of not guilty for him. I am told that the bhang has now been destroyed and there is accordingly no point in my ordering a retrial.

I quash the conviction recorded on count 2 as well as set aside the sentence imposed thereon.

Dated and Delivered at Kisumu this 16th February, 1990

R.S.C OMOLO

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JUDGE