

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: GICHERU, BOSIRE & OWUOR, JJ.A.)

CRIMINAL APPEAL NO. 172 OF 2000

BETWEEN
ANNA AUMA OWINO APPELLANT
AND
REPUBLICRESPONDENT(
Appeal from a conviction and judgment of the High Court
of Kenya at Mombasa (Waki, J.) dated 14th March,
2000 in
H.C.CR.A. NO. 241 OF 1999)

JUDGMENT OF THE COURT

The appellant, Anna Auma Owino, has come to us on second appeal. She was convicted after a trial before the Chief Magistrate's Court, at Mombasa, of the alternative count of being in possession of a Narcotic Drug contrary to section 3(1) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994, as read with subsection 1(a) of the same Act, and was thereafter sentenced to 5 years imprisonment. The main count was Trafficking in Narcotic Drugs contrary to section 4(a) of the aforesaid Act.

The appellant's first appeal against conviction and sentence was dismissed. In the appeal before us she challenges the severity of the sentence which was imposed on her. It is trite law that the question relating to severity of sentence is a matter of fact. Under section 361(1)(b) of the Criminal Procedure Code a second appeal against sentence does not lie. In the circumstances this appeal is incompetent and is ordered struck out.

Dated and delivered at Mombasa this 22nd day of January, 2001.

J. E. GICHERU

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JUDGE OF APPEAL

S. E. O. BOSIRE

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.
DEPUTY REGISTRAR