



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 146 OF 2013

MOHAMED CHENGO APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 1194 of 2013 of the Senior Principal Magistrate's Court at Kwale – Hon. Mutai - RM)

JUDGMENT

MOHAMED CHENGO hereinafter referred to as the Appellant was jointly charged with two others with the offence of being at a place to which persons resort for the purpose of smoking, inhaling or otherwise using narcotic drugs contrary to section 5(1) (b) of the Narcotic drugs and Psychotropic substance control Act No. 4 of 1994.

The particulars being that on the 17th day of October, 2013 at about 00:35 hours at Ukunda township in Diani Location Kwale County they were jointly found at a place to which persons resorts for the purpose of smoking inhaling, sniffing or otherwise using narcotic drugs in contravention of the said Act.

The facts that were read to the Court were very brief. They were as follows,

“It was on 19th October, 2013 police officers from Diani were conducting night duties. They were found at Ukunda town where the narcotics and charged with the offence before the Court”.

The appellant who was the 2nd Accused in the lower Court is shown to have stated in his mitigation that he was found in his place of work.

The offence in which he was charged with is under section 5(b) of the Narcotics drugs and Psychotropic substances Act. which provides,

“ Subject to this Act, any person who without lawful and reasonable excuse, is found in any house, room or place to which persons resort for the purposes of smoking, inhaling, sniffing or otherwise using any narcotic drugs or Psychotropic substance shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or to imprisonment for a term

not exceeding ten years or to both such fine and imprisonment”.

The operative words in the charge is that the persons or person have to be found in a house, a room or a place where people resort (frequent in large numbers) for purposes of smoking, inhaling, sniffing narcotic drugs.

Neither the particulars of the charge nor the facts pin point to the particular area where the appellants and his co-accused were found and whether that place is used for the purposes above mentioned.

The appellant stated that he was found at his place of work.

There is no evidence to the effect that the appellant was found in possession of narcotic drugs. That may explain why he was not charged with possession but the amorphous charge of being at a place where persons resort for purposes of smoking, inhaling narcotic drugs. As argued by Counsel for the appellant Mr. Opolu. Ukunda-Diani is a big town. The whole of the town cannot be said to be a place for inhaling and smoking psychotropic substances.

The facts and the particulars of the charge do not disclose an offence. The Conviction was not safe. The appeal has merit and it is allowed. The Conviction is quashed and the sentence set aside. The appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **19th** day of **December, 2013**.

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M. MUYA

JUDGE

19TH DECEMBER, 2013

In open Court in the presence of:-

Learned Counsel for the Appellant (absent)

Learned state counsel Mr. Ayodo

Court clerk Mr. Chepkwony



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