



Case Number:	Criminal Appeal 457 of 1993
Date Delivered:	26 Sep 1994
Case Class:	Criminal
Court:	High Court at Mombasa
Case Action:	Judgment
Judge:	Samwel Odhiambo Oguk
Citation:	David Danny Legai v Republic [1994] eKLR
Advocates:	Mrs Momanyi for the Respondent/State
Case Summary:	<p>Legai v Republic</p> <p>High Court, at Mombasa September 26, 1994</p> <p>Oguk J</p> <p>Criminal Appeal No 457 of 1993</p> <p>(From original conviction and sentence in Criminal Case No 1060 of the Principal Magistrate's Court at Malindi - J R Karanja, Esq - R M)</p> <p><i>Criminal Practice and Procedure</i> – evidence – charge of possession of dangerous drugs – where one is arrested in possession of drugs – where there's no evidence of grudge or motive or anything to show the planting of the evidence of possession on accused – where drug is examined and found to be prohibited under the Dangerous Drugs Act – whether claim that one was planted with evidence of possession could stand.</p> <p>The appellant was convicted, after trial, of being in possession of 10 grammes of diacetylmorphine (heroin) in accordance with the provisions of Dangerous Drugs Act. He was sentenced to 2 years imprisonment, hence this appeal.</p>

The prosecution's case was to the effect that on 15.9.1993, acting on a tip off, Sergeant Malat Ayot (PW1) and PC Roiman Sadara (PW2) of Anti Narcotics Unit of CID ambushed the appellant. On searching him they found him with what they suspected to be drugs, and on examining at government chemist, they found it to be heroin.

The defence contention was to the effect that at the time of arrest, he was in company of another person, and that it was that other person who was found with the said drug and not him (the appellant).

Held:

1. There was no evidence of grudge between appellant and two police officers (PW1 and PW2) or anything that could suggest that they had motive to plant the evidence of possession of the said drug on the appellant.

2. There was good and reliable evidence proving beyond doubt that the appellant was the one who was actually found in possession of the drug in question.

3. The said drugs were duly examined and found to be diacetylmorphine (heroin) which was a drug within the meaning of Dangerous Drugs Act (cap 245 Laws of Kenya)

Appeal dismissed.

Cases

No cases referred to.

Statutes

1. Dangerous Drugs Act (cap 245) sections 14(1) (c); 18(2)

2. Dangerous Drugs Rules (cap 245 Sub Leg) rule 9

3. Statute Law Miscellaneous Amendment Act, 1983

Advocates

	<i>Mrs Momanyi</i> for the Respondent/State
Court Division:	Criminal
History Magistrates:	J R Karanja, Esq - R M
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal Dismissed.
History County:	Kilifi
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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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 amended by the Statute Laws Miscellaneous Amendment 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-Nacortic 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



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