

# IN THE SEYCHELLES COURT OF APPEAL

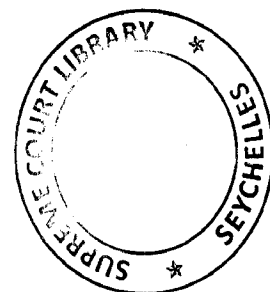
**VERONICAH GIKONYO**

**APPELLANT**

**Versus**

**THE REPUBLIC**

**RESPONDENT**



Criminal Appeal No: 2 of 2002

*[Before: Ayoola. P, Pillay & De Silva JJ.A]*

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Mr. J. Renaud for the Appellant

Ms. C. Hoareau for the Respondent

## JUDGMENT OF THE COURT

*(Delivered by De Silva, JA)*

The appellant was convicted of two charges:

Count 1 - Importation of a controlled drug, contrary to Section 3, read with Section 26(1)(a) of the Misuse of Drugs Act and punishable under Section 29 of the Misuse of Drugs Act and the Second Schedule, referred thereto in the said Act.

Count 2 - Trafficking in a controlled drug, contrary to Section 5, read with Section 14(d) and 26(1)(a) of the Misuse of Drugs Act and punishable under Section 29 and the Second Schedule referred thereto in the said Act.

The appellant, a national of Kenya, arrived at the International Airport, Seychelles, on 19<sup>th</sup> November 2001 on Kenya Airways KQ450/451. The aircraft landed at 3.10 am. At about 3.50 am the appellant was seen walking towards the "red channel". Woodcock, a Senior Trades Tax Officer stopped her and asked a few questions such as the purpose of her visit and whether she had anything to declare. He then requested witness Valentin

who was also on duty at the Airport to search the appellant's suitcase. Valentin asked her to open the suitcase. Thereupon the appellant took the key from her hand bag and opened the suit case. Inside the suitcase there were "*lots of clothes, dresses and skirts.*" While the suitcase was being searched by Valentin, Woodcock observed that the bottom surface "*was a bit uneven.*" Woodcock's suspicions were aroused and he subjected the suitcase to an x-ray. On the screen there appeared a shadow. The bottom of the suitcase was forced open with a crow bar. At the bottom of the suitcase there were "*five plaques which were wrapped in plastic and then sealed with cellotape*" All this was done in the presence of the appellant.

The principal submission of Mr. Renaud for the appellant was that the trial Court erred in its finding that the suitcase belonged to the appellant for the reason that the prosecution adduced no evidence "*as to the whereabouts of the key of the suitcase in order to exclude the possibility that the suitcase might have been switched at Nairobi Airport.*" The validity of this submission, however, has to be considered in the light of the following cogent facts which were proved by the prosecution.

First, both witnesses Woodcock and Valentin deponed that the appellant had with her the key to the suitcase and it was the appellant who opened the suitcase. It was contended that there was a conflict between the evidence of Woodcock and the evidence of Valentin since Woodcock stated that the appellant "*played with the combination*" before opening the suitcase while Valentin's evidence was that the appellant easily opened the suitcase with the key she had with her. We do not see any "*conflict*" in the evidence of the witnesses for the prosecution. The fact remains that it was the appellant who opened the suitcase with the key she took from her hand bag.

Secondly, the appellant in her evidence admitted that it was she who "*packed her suitcase*" and "*put her clothes*" before she left for

Seychelles. What is more, she admitted in evidence that the clothes found in the suitcase belonged to her. The following significant question was put by the Court to the appellant:-

Q: How come your clothes came in, got into this suitcase, if it is not your suitcase, is what he is asking you?

A: I cannot tell you. (Emphasis added)

Thirdly, the baggage tag on the suitcase and the tag on the air ticket of the appellant "tallied" in all material particulars, including the name of the appellant.

Fourthly, in the statement she made to Detective Superintendent Quatre on 19<sup>th</sup> November 2001 and which was marked in evidence without objection as exhibit P3, she had not taken up the position that the suitcase did not belong to her.

On a consideration of the above facts and circumstances, it is clear that the evidence points in one direction and one direction only, namely that the suitcase belonged to the appellant.

The next submission of Mr. Renaud was that there is no evidence that the appellant had knowledge of the "*controlled drug*." The question whether the appellant had the requisite knowledge is a matter of inference from the totality of the facts proved. Once it is established conclusively that the suitcase which the appellant was in possession of belonged to her and, in a false bottom of that suitcase, no less than 5kg 200g of cannabis resin were very carefully packed and concealed, the only reasonable inference, in the absence of an acceptable explanation, is that the appellant had the required knowledge of the controlled drug, in the light of Section 15(1)(a) of the Misuse of Drugs Act (Cap 133) which states as follows:-

"A person who is proved to have in his possession or custody or under his control –

(a) anything containing a controlled drug;

...

shall, until he proves the contrary, be presumed to have had the controlled drug in his possession." (the underlining is ours)

Finally, Mr. Renaud contended that "*the presumption of trafficking*" cannot apply because the appellant was a foreigner who was prevented from coming into the country and before she had possession and control of the drugs. The relevant Section is 14(d) of the Misuse of Drugs Act. It reads thus:-

"A person who is proved or presumed to have had in his possession more than 25 grammes of cannabis resin shall, until he proves the contrary, be presumed to have had the controlled drug in his possession for the purpose of trafficking in the controlled drug." (emphasis added)

On this issue the learned Chief Justice made the following relevant findings which are amply supported by the evidence:-

- (1) The appellant "*had physical possession of the controlled drug.*"
- (2) "*She knew the nature thereof because she made sure that it remained concealed in the bottom of her suitcase...*" Once it is established that the appellant was in possession of more than 25g of the controlled drug, she is deemed in law that she possessed it "*for the purpose of trafficking.*" As very correctly submitted by Ms. Hoareau, Senior State Counsel, the fact that she did not step out of the Airport with the controlled drug is "*no bar to the presumption of trafficking.*"

For these reasons the conviction is affirmed and the appeal is dismissed. We wish to add that the appeal against sentence was withdrawn.



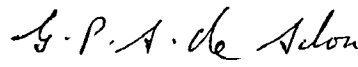
**E. O. AYoola**

**PRESIDENT**



**A. G. PILLAY**

**JUSTICE OF APPEAL**



**G. P. S. DE SILVA**

**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 19<sup>th</sup> day of **December** 2002.