

IN THE COURT OF APPEAL OF SEYCHELLES

Leah Wanjiru Kungu

APPELLANT

VS

The Republic

RESPONDENT

CR SCA No: 17/2011

BEFORE: Fernando, Twomey, Msoffe, JJA

Counsel: Mr. F. Bonte for the Appellant
Mr. Kumar, for the Respondent

Date of Hearing: 31st March 2014

Date of Judgment: 11th April 2014

JUDGMENT

A. F. T. FERNANDO. JA

1. The Appellant appeals against the sentence imposed on her by the Supreme Court after her conviction for importation of a controlled drug, namely 155 grams of pure Heroin.
2. The Appellant had pleaded guilty to the charge leveled against her almost at the commencement of her trial. The drugs as per the statement of facts narrated by the Prosecution and accepted by the

Appellant were concealed in her underwear, namely the panty. However it was the Appellant herself who voluntarily removed the drugs from her panty and handed them over to the customs officers, after she was stopped on her arrival at the Seychelles International Airport on a Kenya Airways flight from Kenya and when they had informed the Appellant that they were going to do a body search on her.

3. In mitigation of sentence, Counsel representing the Appellant before the Trial had stated that she had pleaded guilty, shown remorse in doing so and thus saved the precious time of Court. It had transpired during the submissions on mitigation that the Appellant is 48 years old, and a mother of two children aged 20 years and 10 years, who lived in Kenya. There was no conviction recorded against her as per Seychelles police records.
4. Counsel representing the Appellant before the Trial Court in his submissions on sentence had stated: "I will invite this court to impose the mandatory sentence. This court cannot impose a sentence lower than 10 years and this is what I would invite this court to impose, but not to impose a higher sentence, a minimum mandatory sentence which is available. I will therefore invite this court to impose that sentence."
5. The Learned Trial Judge in passing sentence had taken into consideration that the Appellant had volunteered the information when she was about to be searched, cooperated with the National Drug Enforcement Agency during the course of their investigations, had pleaded guilty and thus saved the court of considerable time and expenses, shown remorse, her age, that she is a mother of two children who reside in Kenya and that she has no previous convictions in Seychelles. Having taken the above factors into consideration the Learned Trial Judge had stated: "I hereby sentence

the 1st Accused to the minimum mandatory sentence of 10 years imprisonment.”

6. We do not find that the sentence imposed by the Trial Judge breaches the proportionality principle and/or the Appellant’s right to a fair hearing as expounded in the case of **Jean Fredrick Poonoo VS The Attorney General SCA 38/2010**; in view of all the circumstances of this case. It is probably for that reason that the Counsel representing the Appellant before the Trial Court had stated that “This court cannot impose a sentence lower than 10 years..” and invited the sentencing court to impose the minimum mandatory sentence. There were no reasons urged before us for a reduction of the sentence imposed, other than what was urged before the sentencing court and thus we are in a difficulty to understand the basis for this appeal.

7. We therefore dismiss this appeal on sentence.

A.F. T. Fernando
Justice of Appeal

I agree

M. Twomey
Justice of Appeal

I agree

J. Msoffe
Justice of Appeal

Dated this 11th of April 2014, Victoria, Seychelles