

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO23/2016

[2016] SCSC

685

THE REPUBLIC

versus

BENEDICT OTAR

Accused

Heard: 9 September 2016
Counsel: Mr George Tachet, State Counsel for the Republic
Mr Nichol Gabriel for the accused
Delivered: 12 September 2016

SENTENCE

Akiiki-Kiiza J

- [1] The Accused pleaded guilty to the charge of trafficking in a controlled drug Contra *Section 5 of the Misuse of Drugs Act, Cap 133 read together with Section 14(1)(b)(1) and Section 26(1)(a) of the same Act and punishable under Section 29 read with second schedule of the same Act.*
- [2] It is the prosecution's case that Mr Benedict Otar, on the 27th day April 2016 was trafficking in a controlled drug by virtue of having been found in possession of Cannabis, herbal material having a net weight of 1,707.15 grams at Old fishing port, Victoria, Mahe

which gives rise to a debatable presumption of having possessed the said controlled drug for the purpose of trafficking.


- [3] When the matter came up for plea the Accused person pleaded guilty and was convicted after he had accepted the facts of the case. The matter is now before me for purposes of passing an appropriate sentence on him.
- [4] The Misuse of Drugs Act has since been amended and by virtue of *Section 5(2) of the new Act*, all outstanding sentences under the old Act must be reviewed in accordance with the new Act. This in my view includes sentences not yet imposed on the Accused person though charged under the old Act. This appears to be in line with the Court of Appeal Judgment in both **Cousin vs R, 21/2013** and **Kelson Alcindor vs R reported 2015 Seychelles Court of Appeal request at page 7.**
- [5] It was held in those cases that the Accused should benefit from the change of the law in his favour.
- [6] The aggravating factors include the weight or the quantity of the drugs. If it is more than 1.5 kilograms of Cannabis or cannabis resin or 250 grams of another controlled drug its aggravating factor.
- [7] In this particular case the accused was found with about 1.7 kilograms of cannabis herbal material. It appears that this is the only aggravating factor against the Accused. On the other hand the Accused has pleaded guilty to the charge which fact the Court has taken into consideration as showing a degree of repentance or remorse on his part. The Courts will normally reduce the sentence in the plea of guilty of about 20%. Secondly he is also a first offender. The indicative minimum sentence for aggravated offence under the new Act is 15 years. (See *Section 7* under the second schedule.)
- [8] We must also consider the principles in **FREDERICK PONO** that the Court is to be concerned on a case-to-case basis while imposing the sentence and must look at the circumstances of the individual attributes of the offender and the facts of that particular case before it imposes the sentence. See the case of **Wilven Cousin vs The Republic, Court of Appeal No 21 of 2013.**

[9] Putting everything into consideration including the Probation Officer's report and also noting that the Accused is declared to be a taker of the drug and not a dealer. Noting that the learned counsel for the Accused appeared to suggest that 6 year imprisonment is an appropriate sentence. I will oblige and impose a sentence of 6 years imprisonment on the Accused.

[10] All-in-all I Sentence the Accused to 6 years imprisonment.

Order accordingly.

Signed, dated and delivered at Ile du Port on 12 September 2016

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by several vertical strokes, likely representing the name 'D Akiiki-Kiiza'.

D Akiiki-Kiiza
Judge of the Supreme Court