

Library

THE SUPREME COURT OF ZAMBIA
AT NDOLA

SCZ Appeal No. 58/07

(Appellate jurisdiction)

BETWEEN:

RICHARD FRANK

Appellant

And

THE PEOPLE

Respondent

Coram: Lewanika DCJ; Silomba JS and Kabalata AJS on 5th and 7th
June, 2007.

Kabalata, AJS, delivered the judgment of the Court.

JUDGMENT

Cases referred to:

(1) *Mwiba vs. The People (1971) ZR 131*

Legislation referred to:

(1) *S44, Narcotic Drugs and Psychotropic substances Act, Cap. 96*

The Appellant Richard Frank was convicted by the Subordinate Court of the Third class for Nakonde District of trafficking in narcotic or psychotropic substances contrary to section 6 of Cap. 96 of the Laws of Zambia.

The particulars of offence were that he and two others, on 26th October 2005 at Nakonde in the Nakonde District of the Northern Province of the Republic of Zambia jointly and whilst acting together did traffic in narcotic or psychotropic substances namely Miraa or Khat containing the active ingredient cathine weighing 31.4 kilogrammes without authority.

The charge against the second and third accused persons was subsequently withdrawn by the Public Prosecutor under Section 88(a) of the Criminal Procedure Code, and they were accordingly discharged.

When the trial commenced in respect of the first accused, now the appellant in this appeal, and after one prosecution witness had given evidence, the appellant informed the trial magistrate that he wished to change his plea from one of not guilty to guilty. A fresh plea was then taken by the court and the appellant admitted the charge.

When the statement of facts was read out to the appellant, he admitted that they were correct and the court then found him guilty and convicted him accordingly.

The Public Prosecutor then informed the Court that the appellant was a first offender..

In mitigation, the appellant asked for forgiveness from the Court and that if given a custodial sentence, he would fail to look after his brothers. He pledged not to repeat what he had done.

The Court then proceeded to commit the Appellant to the High Court for sentence on the grounds that the offence he had committed was a very serious one.

When the case came up for sentence at the High Court, the presiding judge told the appellant that the offence he had committed was not only serious but prevalent. He then imposed a sentence of 20 years imprisonment with hard labour to deter other Tanzanian nationals who will deal in these drugs.

The appellant now appeals to this court against sentence on the ground that it is excessive.

On behalf of the appellant, Mr. E.M. Sikazwe, the learned acting Director of Legal Aid, submits that the sentence imposed by the lower court was excessive taking into account the fact that the appellant was a first offender who had pleaded guilty and who had also shown contrition. In support of his submission, Mr. Sikazwe referred us to *Mwiba vs. The People*¹ where we said that a first offender who pleads guilty to a charge deserves to be treated with leniency. In reply, Ms. J. Kaumba, the learned Deputy chief State Advocate, left everything to the court to decide.

We have considered the facts of this case and the submissions of Counsel. We entirely concur with Mr. Sikazwe's submission that as a first offender who had pleaded guilty to the charge and had not wasted the court's time, and had shown contrition, the Appellant deserved to be treated with leniency with regard to sentence.

We also wish to observe that under section 44 of the Narcotic Drugs and Psychotropic Substances Act Cap. 96 of the Laws of Zambia:-

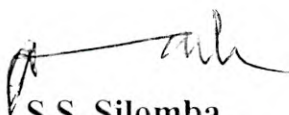
“Any person convicted on a second or subsequent offence for trafficking shall be liable to imprisonment for a term of not less than ten years”

Since, the appellant is a first offender and not a subsequent offender, and for what we have said in the **Mwiba case**¹, supra this appeal is allowed.

We therefore set aside the sentence of 20 years imprisonment with hard labour imposed upon the appellant by the lower Court and in its place we substitute a sentence of 5 years imprisonment with hard labour. The sentence is to run from the date of arrest.



D.M. Lewanika
DEPUTY CHIEF JUSTICE



S.S. Silomba
JUDGE SUPREME COURT



T.A. Kabalata
ACTING SUPREME COURT JUDGE