

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(CRIMINAL JURISDICTION)

APPEAL NO. 166/2008

B E T W E E N:

ALEX SICHONE

VS

THE PEOPLE

CORAM: MAMBILIMA, DCJ, SILOMBA AND MWANAMWAMBWA, JJS
ON the 2nd and 4th June, 2009

For the Appellant: Mr. K. MUZENGA, Senior Legal Aid Counsel, Legal Aid Board

For the Respondent: Mr. P. MUTALE, Principal State Advocate

JUDGMENT

SILOMBA, JS, delivered the judgment of the Court.

This is an appeal against conviction and the subsequent sentence imposed by the learned trial Judge on the 12th November 2007. The Appellant was charged, tried and convicted in the Magistrate's court at Nakonde for the charge of trafficking in psychotropic substances contrary to Section 6 of the Narcotic Drugs and Psychotropic Substances Act, Chapter 96 of the Laws. The particulars of the offence were that the Appellant, on the 9th day of August 2006 at Nakonde

in the Nakonde District of the Northern Province of the Republic of Zambia, did traffic in psychotropic substances, namely, miraa weighing 24 kilograms without authority.

The Appellant pleaded not guilty to the charge and after a trial he was convicted as charged. The trial Magistrate then committed him to the High Court for sentence. At the High Court session at Kasama the Appellant was sentenced to 15 years imprisonment with hard labour.

At the hearing of the appeal, Counsel for the Appellant indicated to us that he was appealing against sentence only. The Appellant contended, in his ground of appeal, that the sentence of up to 15 years imprisonment with hard labour imposed on him was excessive considering that he was not a subsequent offender.

The Appellant further contended in his heads of argument that he was very remorseful and that he had learnt that getting involved in crime was not profitable. He submitted that the sentence of fifteen years was too excessive and that as a first offender he deserved some lenience. In his oral submission, Counsel for the Appellant repeated, by way of emphasis, what was contained in the heads of argument.

We have considered the only ground of appeal against sentence and we are of the view that there is merit. The fact that the Appellant was a first offender was confirmed by the public prosecutor at page 12 of the record of appeal. However, when the learned trial Judge imposed the sentence of 15 years imprisonment with hard labour he treated the Appellant as if he was a second or subsequent offender. We say so because under Section 44 of the Narcotic Drugs and Psychotropic Substances Act it is enacted that:

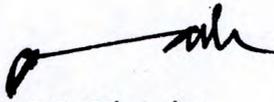
44. Any person convicted on a second or subsequent offence for trafficking shall be liable to imprisonment for a term of not less than ten years.

We are alive to the fact that under Section 6 of the same Act, under which the Appellant was charged, the sentencing Court had jurisdiction to send him to prison for a term of imprisonment of up to 25 years. However, in the absence of any aggravating factors, which we have not established from the record of appeal, we find the Appellant is entitled to leniency as a first offender.

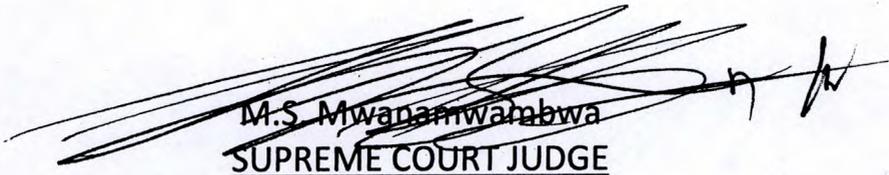
In the circumstances of this case, we shall impose a sentence of five years imprisonment with hard labour from the 11th August 2006. The order of the learned trial Judge of 15 years imprisonment is set aside and substituted accordingly. The Order to have the Appellant deported after serving his sentence is still valid and enforceable.



I.C. Mambilima
DEPUTY CHIEF JUSTICE



S.S. Silomba
SUPREME COURT JUDGE



~~M.S. Mwanambwa~~
SUPREME COURT JUDGE