

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT Jinja

CRIMINAL APPEAL NO. 14 OF 1994

orig. CRIMINAL CASE NO. MJ. 1048/94

ISABIRYE JULIUS APPELLANT

VERSUS

UGANDA RESPONDENT

BEFORE: THE HONOURABLE JUSTICE C. M. KATO

J U D G M E N T

The appellant Isabirye Julius was charged with the offence of being in possession ^{of} Marijuana without lawful excuse contrary to sections 65(1) and 76(2)(c) of the Pharmacy & Drugs Act. He pleaded guilty before the Chief Magistrate of Jinja and he was sentenced to 18 months imprisonment. He appealed against the sentence and gave 5 reasons for his appeal but at the hearing of the appeal the learned counsel for the appellant Mr. Liiga decided to argue grounds no. 1, 4 and 5 only, he abandoned grounds 2 and 3.

Mr. Liiga argued that the sentence of 18 months was too harsh considering the fact that the accused was a first offender, he pleaded guilty to the offence, he was a mere boda boda rider and he had a family of 1 wife and 2 children to look after, he also pointed out that the sentence which was imposed upon him under section 76(2)(c) of the Pharmacy and Drugs Act was a wrong one, the proper section under which he should have been sentenced was 76(2)(d) of the same Act. Mr. Okwanga who appeared for the respondent conceded that the accused had been sentenced under the wrong section as that section deals with an accused who had been previously convicted of the same offence but in this case the accused had not committed the same offence before so the case fell under para. (d) of subsection (2). He however pointed out that the mere fact that a wrong section was quoted when sentencing the accused that in itself did not render the sentence illegal. He further conceded that the period of 7 months served by the accused in prison was enough to punish him for the offence and he therefore did not oppose the appeal. I agree with Mr. Okwanga's

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contention that quotation of the wrong section of the law does not render the sentence illegal.

Considering the fact that the accused had pleaded guilty to the offence thus saving court's time, that he was a first offender, that the maximum sentence for the offence was 10,000/= or 3 years imprisonment and considering the fact that the state does not oppose this appeal I feel the sentence of 18 months was harsh and excessive in all the circumstances of this case. I accordingly do allow this appeal and I do set aside the sentence of 18 months, in it's place a sentence of 7 months imprisonment is substituted. As the accused has already served that period he should be set free.

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C. M. KATO

JUDGE

15/3/1995