



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO. 52 OF 2012**

*(From Original Conviction and Sentence in Criminal Case No. 132 of 2011 of the Chief Magistrate's Court at Mombasa – T. Ole Tanchu, SRM)*

**ALI MOTI MWANZALA .....APPELLANT**

**- Versus -**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Appellant has filed this appeal against conviction and sentence.
2. He was charged with the offence of Trafficking in Narcotics Drugs contrary to Section 4(a) as read with Section 2(a) of Narcotic Drugs and Psychotropic Substance Control Act (the Act). The particulars of the offence were as follows-

***“ALI MOTI MWANZALA: On the 12<sup>th</sup> day of January 2011 at Bombolulu area in Kisauni District within Coast Province was found trafficking by selling narcotic drugs to wit one big roll and 10 small rolls of cannabis valued at street value Kshs. 300/- in contravention of the said act.”***

3. Plea was first taken on 14th January 2011 when the Appellant pleaded not guilty. The case was then fixed for hearing on 2nd February 2011. On that day, the Court record shows as follows-

***“Accused – I ask the court to read to me the charges again.***

***Charge read over and explained to the accused person in Kiswahili and he pleads:-***

***Accused – It is true.***

***Court – Plea of guilty entered.”***

4. The facts were read out to the Appellant and at the conclusion of those facts the Appellant stated '***facts are true***'.
5. The Appellant has appealed raising four grounds to his appeal. On the first ground he submitted that the charge presented before the Magistrate's Court was null and void. He argued that the prosecution had not satisfied the definition of Trafficking. He argued that Trafficking meant taking any article from one place to another.
6. Section 2 of the Act the act of possessing and even concealing a narcotic drug is defined as Trafficking. According to the facts which as stated before were confirmed to be correct by the Appellant the Police on receiving certain information that the Appellant was selling cannabis visited a place stated in the information and found the Appellant had one big roll and ten small rolls of cannabis which were concealed in the Appellants person. Accordingly those facts fit the definition in Section 2. That ground is rejected.
7. The Appellant's other ground of submission was that the plea as recorded by the learned Magistrate failed to record the words that he spoke in Kiswahili language. Section 198 of the Criminal Procedure Code Cap 75 provides as follows-

***“Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language which he understands.”***

8. The emphasis of that Section is that an accused person should understand the Criminal proceedings. In this case, the charge was read in Kiswahili. The contention of the Appellant is that his response to the charge was recorded in English language as '***It is true***'. According to the Appellant it should have been recorded in Kiswahili. I believe that the argument being put forward by the Appellant on this ground is indeed stretching the meaning of Section 198. Section 198 simply required the accused to understand the proceedings and looking at the record of the lower Court the Appellant did understand the proceedings. This ground is also rejected.
9. It is not clear to the Court what the Appellant meant when he said that he was not given adequate time before taking a plea because as stated before he appeared before Court on 14th January 2011 and pleaded not guilty. However, on the day fixed for the hearing of the case that is 2nd February 2011 the Appellant requested the Court to re-read the charge to him again. This time the Appellant pleaded guilty to the charge. The time between the first appearance and the date he pleaded guilty is 18 days. That to this Court is adequate time for the plea that was taken and accordingly that ground is also rejected.
10. The Appellant finally stated in his ground that the Court failed to note that he had been persuaded or couched by police to plead guilty. This ground must fail because the Appellant pleaded guilty and then confirmed that the facts that were read were correct. He did not inform the Court that he was couched to plead guilty.
11. I find that the Appellant's appeal is unmerited and the same is dismissed.

***Dated and delivered at Mombasa this 19<sup>th</sup> day of December, 2013.***

**MARY KASANGO**

**JUDGE**

