

HONG KONG / JUDGMENT

HKSAR v. KATA MALUSI NICHOLAS

[2026] HKCA 965**COURT**

Court of Appeal

DECIDED

12 May 2026

CASE / FILE NUMBER

CACC269/2025

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CACC 269/2025 [2026] HKCA 965 On appeal from [2025] HKCFI 1884 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO 269 OF 2025 (ON APPEAL FROM HCCC NO 305 OF 2024)

BETWEEN HKSAR Respondent and Kata Malusi Nicholas Applicant

Before: Hon Zervos JA in Court Date of Hearing: 12 May 2026 Date of Judgment: 12 May 2026

J U D G M E N T

On 25 March 2025, the applicant was sentenced to 10 years' imprisonment by Wilson Chan J (the judge), following his guilty plea in the Magistrates' Court to a single count of trafficking in a dangerous drug, namely 473 grammes of a solid containing 375 grammes of cocaine. On 15 July 2025, the applicant filed an application for leave to appeal against sentence out of time by over two months. In an accompanying affirmation dated 11 July 2025, he stated that he had become aware of recent High Court decisions involving double or higher quantities of dangerous drugs, including comparable cases concerning the same airport, substance and quantities, in which the offenders had received more lenient sentences than he did. He explained that it therefore took him some time to "reason with himself" before lodging the application in order to seek a reduction in sentence. Mr Jones Tsui, for the respondent, opposes the grant of an extension of time, submitting that the applicant has failed to provide an acceptable explanation for the delay in filing his leave application, notwithstanding that the delay itself cannot be regarded as substantial. At the leave hearing, the applicant appears in person, having had his application for legal aid refused on 2 September 2025. The summary of facts The facts outlined to the judge and admitted by the applicant were as follows. On 16 November 2023, the applicant arrived at Hong

Kong International Airport via Doha, Qatar. During a secondary examination by an Immigration officer, he claimed that he intended to visit Hong Kong for seven days to purchase computer accessories for resale in Kenya, but was unable to show sufficient knowledge of the alleged business. As the stated purpose of his visit was considered suspicious, he was refused permission to land and escorted for customs clearance. Upon search, no contraband was found on his person or carryon luggage. He had on his person US\$1,300 in cash, two mobile telephones with five SIM cards, and boarding passes for his flight to Hong Kong from Nairobi via Doha on 15 and 16 November 2023. As it was suspected that he might have drugs concealed inside his body, he was taken to North Lantau Hospital for medical examination, which revealed foreign objects in his body cavity. He was then arrested. On 17 November 2023, the applicant discharged a total of 48 plastic pellets, which were subsequently certified to contain the quantity of cocaine as particularised in the count. After he had discharged half of the pellets, he admitted under caution that he knew they were drugs but did not know what kind. He stated that a man called Sam had given him the pellets in Kenya and asked him to bring them to Hong Kong, and that Sam had given him a reward of US\$1,300 for doing so. He said he had swallowed 48 pellets. In a postrecorded statement, he clarified that he meant to say that he had brought US\$1,300 for his own commercial use, and that Sam was to send someone to his hotel to pay him after he delivered the pellets. The WhatsApp records on the applicant's mobile telephones showed that, on 9 November 2023, a person called "Nkirote" forwarded a message to him saying, "Tell Nick to be getting ready. He will travel for us soon." On 11 November 2023, "Nkirote" told him that his ticket had been confirmed and that he would be leaving on 15 November 2023. On 14 November 2023, "Nkirote" sent him a booking confirmation under his name for Park Guest House in Chungking Mansions for a stay in Hong Kong between 16 and 22 November 2023. On 16 November 2023, after he reported that he was in Doha, "Nkirote" replied, "just pray you arrive safely then come back and pay him/her." At his plea, the applicant admitted trafficking in the dangerous drugs seized by importing them into Hong Kong. The sentencing The applicant, a Kenyan national, was 44 years of age at the time of sentencing. He was married with three children and had a clear record in Hong Kong. He had received a secondary school education and worked as a taxi driver in Kenya. In mitigation, it was submitted that the applicant committed the offence due to financial difficulties, having been unemployed during the pandemic and having paid for his younger brother's medical expenses, and that his wife suffered from dementia. It was said that he made a foolish choice in bringing the drugs to Hong Kong after a Nigerian customer, whom he knew from his work as a taxi driver in Kenya, introduced the "trafficking job" to him. Defence counsel urged the judge to adopt a starting point of 14 years and 4 months' imprisonment, with an enhancement of less than 1 year for the international element. In addition to the one-third discount for the applicant's guilty plea, counsel sought a further reduction of 3 months for his participation in Father Wotherspoon's anti-drug campaign and the useful information he had provided to the Kenyan authorities. In sentencing the applicant, the judge adopted a starting point of 14 years and 4 months' imprisonment for the 375 grammes of cocaine, in accordance with the revised guidelines in *HKSAR v Huang Ruifang* (No 3). Having considered the applicant's role as a courier, in that he delivered the drugs for someone from Kenya to Hong Kong for a reward, and the international element involved, the judge enhanced

the starting point by 10 months to 15 years and 2 months' imprisonment. In light of his participation in Father Wotherspoon's anti-drug campaign and assistance to the Kenyan authorities, the judge reduced the starting point by 2 months to 15 years' imprisonment. After applying a one-third discount for his guilty plea, the judge sentenced him to 10 years' imprisonment. Discussion The applicant made a general complaint that offenders in other cases involving similar quantities of dangerous drugs and comparable circumstances had received lighter sentences, without identifying any particular cases. He was also under the misapprehension that the judge did not apply the revise guidelines. This was clearly not correct. The respondent submits that, as set out in the sentencing remarks, the judge properly considered the applicant's personal and financial circumstances and all relevant aggravating and mitigating factors, in accordance with the applicable sentencing guidelines and principles. The sentence of 10 years' imprisonment is neither wrong in principle nor manifestly excessive. This Court has repeatedly emphasised that the question on appeal is whether, in the circumstances of the case and applying the relevant sentencing principles and guidelines, a fair and just sentence was imposed, and that comparisons with other cases are of limited assistance. I can find no fault in the judge's approach or reasoning in sentencing the applicant. He properly applied the relevant sentencing principles and guidelines and thoughtfully set out his reasons for sentence. There is no basis on which to interfere with the sentence imposed on the applicant. Accordingly, the applicant's application for leave to appeal against his sentence out of time is refused. The applicant is reminded of his right to renew his application for leave to the Court of Appeal, but he is also informed of the consequences of doing so, which may include a direction for any loss of time spent in custody pending his appeal, if the Court were to come to the view that there was no justification for the renewal of his application. (Kevin Zervos) Justice of Appeal Mr Jones Tsui, SPP, of Department of Justice, for the respondent The applicant appeared in person

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