



**Godana v Republic (Criminal Appeal E016 of 2022)
[2023] KEHC 18087 (KLR) (24 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL APPEAL E016 OF 2022**

JN NJAGI, J

MAY 24, 2023

BETWEEN

DENGE GODANA APPELLANT

AND

REPUBLIC RESPONDENT

*((Being an appeal from the original conviction and sentence by
Hon.S.K.Arora, SRM, in Marsabit Chief Magistrate's Court
Criminal Case No. E 254 of 2022 delivered on November 24, 2022))*

JUDGMENT

1. The Appellant herein was convicted on his own plea of guilty for the offence of trafficking in narcotic drugs contrary to section 4(a) (ii) of the [Narcotic Drugs and Psychotropic Substances \(Control\) Amended Act](#) No 4 of 2022. The particulars of the offence were that on November 10, 2022 at Milima Tatu Location in Marsabit Central sub county within Marsabit County he trafficked by storing in his house narcotic drugs, namely cannabis sativa to wit 6.7 kilograms with a street value of Ksh 201,000/=, in contravention of the provisions of the said Act.
2. The Appellant was sentenced to serve five years imprisonment. He was aggrieved by the outcome and filed the instant appeal. The grounds of appeal are that the appellant was not accorded a fair trial and that the court failed to consider that there was communication barrier. However, the Appellant filed written submissions and mitigation in which he stated that he was only appealing against the sentence. His grounds were that the sentence imposed on him was harsh and excessive in the circumstances of the case. He asked the court to consider that he pleaded guilty to the charge; that he was the sole bread winner of his family; that he was a first offender; that he is remorseful and has reformed while serving sentence.
3. The court construes that the appeal is on sentence.



4. The Appellant submitted that the maximum sentence for the offence charged is life imprisonment. That the trial court failed to consider the mitigatory factors especially that he did not waste the court's time by pleading guilty to the charge. He relied on the Court of Appeal decision in *Caroline Auma Majabu v Republic* (2014) eKLR where the court stated that the sentence provided for trafficking is the maximum intended for drug barons and serious drug dealers with drugs worth thousands if not millions of shillings and not small timers such as the Appellant herein.
5. The Appellant further submitted that the sentence imposed in such a case should aim at rehabilitation rather than incarcerating and destroying an offender. He asked the court to be guided by sentencing guidelines set out in the Judiciary Sentencing Guidelines. He prayed for a non-custodial sentence.
6. The state opposed the appeal through the oral submissions of the Prosecution Counsel, Mr. Otieno. He submitted that the sentence for the offence that the Appellant was facing is life imprisonment and a fine of Ksh. one million or 3 times the value of the drug. That the trial court did not impose a fine on the Appellant as required by law. He urged the court to confirm the sentence and maintain the sentence of 5 years imprisonment.
7. I have considered the grounds of appeal and the grounds in opposition thereto. The court is alive to the fact that sentencing is a discretion of the trial court and being so it must be done judiciously. I find guidance in this respect in the Court of Appeal decision in the case of *Shadrack Kipkoech Kogo - vs - R. Eldoret Criminal Appeal No.253 of 2003* where it was held that:

“sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka - vs- R. (1989 KLR 306)*”

8. The same Court in *Bernard Kimani Gacheru vs. Republic* [2002] eKLR stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

9. The Appellant admitted a charge of trafficking in cannabis sativa contrary to section 4(a) (ii) of the Narcotic & Psychotropic Substances (Control) Act No.4 of 2022. The section provides as follows:

Penalty for trafficking in narcotic drugs, etc.

Any person who trafficks in, or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her to be a narcotic drug or psychotropic substance, shall be guilty of an offence and liable—

- (a) in respect of any narcotic drug or psychotropic substance—



- (i) where the person is in possession of between 1—100 grams, to a fine of not less than thirty million shillings or to imprisonment for a term of thirty years, or to both such fine and imprisonment;
- (ii) where the person is in possession of more than 100 grams, to a fine of not less than fifty million shilling or three times the market value of the narcotic psychotropic substance, whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment.

10. The Appellant was found trafficking cannabis sativa weighing 6.7kg with a market value of Ksh 201,000/=. The three times market value of the drug was Ksh 603,000/=. From my reading of sub-section 4(a) (ii) the trial court had the option of imposing a fine of not less than Ksh fifty million or imposing a prison term of up to fifty years or both of these. The court opted to impose a sentence of 5 years.
11. I have Considered the quantity of the drug the Appellant was found trafficking which is 6.7 Kg of cannabis sativa. He was liable to a prison term of up to a maximum of fifty years. I have considered what the Appellant stated in mitigation and weighed it against the serious offence that the Appellant was facing. I find the sentence of 5 years to have been appropriate.
12. The upshot is that there is no merit in the appeal and the same is consequently dismissed.

Delivered, dated and signed at MARSABIT this 24th day of May 2023.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Otieno for Respondent

Appellant – present in person

Court Assistant -

14 days R/A.

