

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. E050 OF 2021

JOHN NZUNGI MUEMA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon. Sagero SRM in Makueni Chief Magistrate's Court CMCR Case No.E137 of 2021 pronounced on 20th May, 2021).

JUDGMENT

1. The appellant was charged in the magistrates' court with possession of narcotic drugs contrary to section 3(1) as read with section 3(2) of the Narcotic Drugs and Psychotropic Substances Act 1994.
2. He pleaded guilty to the charge and was thus convicted and sentenced to serve 2 years imprisonment.
3. He has now come to this court on appeal on sentence only, asking this court to consider mitigating factors. He asks for non-custodial sentence, and the learned Assistant Director of Public Prosecutions Mr. Tanui left the matter to the court to decide.
4. Sentencing is a discretionary power exercised by trial courts. In the present case, the appellant was found with 28 rolls of bhang. He pleaded guilty and in mitigation asked the trial court for forgiveness saying that he had young children to take care of.
5. I note that the trial court took into account the mitigation of the appellant in sentencing, and sentenced him on 20th May 2021 to two (2) years imprisonment. It is now almost one year since he was sentenced.
6. In my view, the sentence of 2 years imprisonment for the offence is not excessive taking into account the prevalence of the offence in this area and the fact that he was found with 28 rolls of bhang, which means that he was a peddler of the drugs. In declining to review the sentence, I am sure he will be eligible for remission for good behavior by the prison authorities. The sentence is deterrence to other would be offenders.
7. I dismiss the appeal on sentence and uphold the sentence pronounced by the trial court.

DELIVERED, SIGNED & DATED THIS 25TH DAY OF JANUARY, 2022, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE