



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO. 31 OF 2019

JOHN MUCHIRI KIBOI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant was charged with offence of *Being in Possession of Bhang contrary to Section 3(1) as read with Section 3(2) (a) of the Narcotic Drugs and Psychotropic substances control Act No. 4 of 194.*

2. Particulars are that on the 17th March, 2019 at around 0730hrs at Mairo – Inya Centre in Mairo Inya Location within Nyandarua County was found in possession of bhang. To wit 65 rolls of street value Kshs.1950/- which was not in mechanical preparation form.

3. He pleaded guilty and in mitigation Appellant sought forgiveness. Probation report was ordered in sentencing Appellant court made order:

“Accused person is a serial drug peddler as seen in the probation report. Accused person has three previous records one which he served five years in person. I will therefore sentence him to serve seven years in prison.”

4. The Appellant has lodged instant appeal which is in form of re – mitigation: which are;

i. He pleaded guilty to the charge.

ii. He very remorseful of my deeds and pray for forgiveness.

iii. The has health complication both internally (lung problem) and externally his hand dislocated on my shoulder hence making his condition too harsh in the prison.

iv. That he is a father of one and the sole bread winner of his family.

v. That he is orphaned with two minors siblings namely W and J who he takes care of aged 14 and 16 years, they fully depend on him as their sole provider.

vi. He doesn't have a permanent place he can call home since he is internally displaced person affected by post-election violence of 1992 from Mau Summit hence he lives in rented housing prompting the suffering of his dependants in his absence.

vii. That before, he was a casual laborer.

viii. That, in his rehabilitation process he has undergone sessions of counselling and he is remorseful of his action. He is now a born again and god fearing Christian and as a result he has studied in prisoner journey and graduated with a certificate in the same.

He has acquired a certificate in business, training that was carried out by stride a Non-Governmental Organization that helps in rehabilitation of offenders. He has undergone also undergone training in tailoring acquired Government Trade Test Three and Two. He is a professional now a professional tailor.

ix. Thus humbly request this Honorable Court to place him on non-custodial sentence (probation) for the remaining part of his sentence to enable him serve his family and participate in national building. Granting him his request will also help in decongesting the prison.

5. During hearing of the appeal, the Appellant repeated his grounds of appeal which were mitigations.

6. The prosecution supported conviction and sentence as valid and urged court to reject appeal with a rider that the court may reconsider the sentence.

DETERMINATION:

7. The has considered the charge sheet, the fact that he pleaded guilty, the quantity of the substance cannabis found in his possession, the previous record, prosecution concession that court can deal with sentence in the spirit of decongestion of prisons.

8. The most adverse element of the instant record is the appellants previous record which talks of his 3 previous convictions and sentences. However, this time round after being in custody for 3 or so years, he has done above mentioned course which may have transformed his live as he says and to demonstrate that he has seen the light and has given his life to Our Lord Jesus Christ thus he needs another chance to build himself and the nation outside prisons life.

i. Thus the court will give him a benefit of doubt and give him two years non-custodial sentence to work at his home locality at their local chief's office for that period. In default of adherence to the stipulation by probation officer in discharge of the aforesaid duties, the order will stand vacated and appellant will be taken to prison to serve remaining period of imprisonment.

DATED AND SIGNED AT NYAHURURU THIS 17TH DAY OF FEBRUARY, 2022.

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CHARLES KARIUKI

JUDGE