

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION E054 OF 2021

WALUKWE MANG'OLI..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an Application for Revision of sentence in Ukwala SRMCRC 138 of 2021 on 10.03.2021 by Hon. C.I. Agutu – Senior Resident Magistrate)

RULING ON REVISION

1. The Convict **Walukwe Mang'oli** is aged 67 years old. He was sentenced to serve three years imprisonment on 10.3.2021 for the offence of being found in Possession of Cannabis Sativa (bhang) by Ukwala Senior Resident Magistrate Hon. C.I. Agutu. The quantity of bhang as per the charge sheet is 5 rolls with a street value of KShs.200/= in **Contravention of Section 3(2) of the Psychotropic Drugs substances (sic) Act No. 4 of 1994**. He is said to have pleaded guilty to the said charge

2. I have carefully perused the court proceedings for 10.3.2021 which are said to have been conducted before Hon. C.N. Sindani, Principal Magistrate. However, the Coram of the Court as recorded does not agree with the proceedings that follow thereafter in that the proceedings were conducted by Hon. C.I. Agutu, Senior Resident Magistrate who took the plea of guilty duly entered.

3. In addition, despite the sentencing of the convict that followed that plea of guilty, there is no conviction of the offender. The facts as read out to the accused did not disclose an offence as there was no evidence that Exhibit 1, was bhang. The trial magistrate rushed to sentence the accused before convicting him and or even asking for records, of whether he was a first or repeat offender.

4. Furthermore, the charge sheet is defective. There is no such law as **Psychotropic Drugs substances Act**. The only law that is in existence is the **Narcotic drugs and psychotropic substances (control) Act No. 4 of 1994**.

5. The proceedings before Hon. C.I. Agutu were therefore fatally defective and irregular. The plea was equivocal and the Law under which the applicant was sentenced without being convicted for any offence does not exist. This is against the principle of legality. The trial court is under a duty to ensure that convictions are entered only against contraventions of an existing and not fictitious Law or Statute.

6. For the above reasons, the proceedings in Ukwala Senior Resident Magistrate Criminal Case No. 138 of 2021 recorded by Hon. C.I. Agutu, Senior Resident Magistrate, are hereby quashed and the sentence of three years imprisonment imposed on the applicant Walukwe Mang'oli is hereby set aside.

7. Therefore, unless otherwise lawfully held, Walukwe Mangoli is hereby set at liberty forthwith.

8. File closed.

9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 24TH DAY OF JUNE, 2021

R.E. ABURILI

JUDGE