



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 5 OF 2020**

**PETER GACHANJA KIBANYA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal against the sentence of 3<sup>rd</sup> December 2015 charged with offence of Trafficking*

*in Narcotic Drug contrary to section 4(b) of the Narcotic Drugs & Psychotropic*

*Substances Control Act No. 4 of 1994 by Hon. D. Mochache PM*

*at Mombasa Chief Magistrate Court.*

**J U D G M E N T**

1. The Appellant Peter Gachanja Kibanya filed appeal against the sentence passed against him in Mombasa Chief Magistrates Court CR. Case No. 2337 of 2015 by Hon. D. Mochache PM on 3<sup>rd</sup> December 2015 for the offence of trafficking in Narcotic drugs contrary to Section 4(b) of the Narcotic drugs and psychotropic substances Control Act No. 4 of 1994 where he was sentenced to 10 years imprisonment.

2. The particulars of the offence were that Peter Gachanja Kibanya on the 25<sup>th</sup> day of November 2015 at Makadara are access Mombasa District within Mombasa County was found trafficking in narcotic drugs to wit 13 rolls of cannabis with street value of Kshs.260/= by way of conveying in contravention of that said act.

3. The appellant pleaded guilty to the charge and facts when explained to him and upon consideration of his mitigation he was sentenced to 10 years imprisonment.

4. Appellant has appealed on the ground that sentence is harsh and excessive;

- That the charge of trafficking was never proved.
- That the trial Magistrate did not consider that his arrest had no connection with the charge.

He also said he never wasted courts time and he was remorseful. The Respondent counsel didn't oppose appeal.

5. The appeal is therefore allowed. Period served by appellant is more than sufficient punishment for offence of trafficking 13 rolls of cannabis with street value of Kshs.260/=. The appellant to be set at liberty forthwith unless lawfully detained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT /ONLINE THROUGH MS TEAMS, THIS 29TH DAY OF JULY, 2021**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:-**

*Ogwel – Court assistant*

*Ms. Karanja for Respondent*

*Appellant – Present in person*

***Hon. Lady Justice A. Ong'injo***

***Judge***