



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[Coram: A. C. Mrima, J.]

CRIMINAL APPEAL NO. 70 OF 2019

GORDON ODHIAMBO OYUGI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal on sentence arising from the conviction and sentence by Hon. C. M. Kamau Senior Resident Magistrate in Rongo Magistrate's Criminal Case 338 of 2017 delivered on 27/06/2019)

JUDGMENT

1. The Appellant herein was charged with the offence of *Being in possession of Narcotic Drugs (bhang)* contrary to **Section 3(1)** as read with **Section 3(2) of Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994**. The street value of the substance was Kshs. 13,200/=.
2. He denied the offence and was tried. He was found guilty as charged, convicted and sentenced to 2 years' imprisonment. He appealed to this Court on both conviction and sentence. At the hearing of the appeal the appellant successfully withdrew his appeal on conviction. He however proceeded with the appeal on sentence.
3. The appellant orally argued the appeal. He prayed for a non-custodial sentence.
4. The appeal on sentence was opposed. The state submitted that the appeal be dismissed since the sentence is even more lenient than what is provided in the law.
5. This is an appeal on sentence. The High Court in **Wanjema v. Republic (1971) EA 493**, rightly so, laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
6. I have considered all the issues in this matter and noted that the sentencing court took into account all the relevant issues including the fact that the appellant absconded and was later arrested and sentenced. I do not see how the court erred noting that even the sentence was very lenient.
7. The appeal on sentence is dismissed.
8. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 27th day of February, 2020.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Gordon Odhiambo Oyugi the Appellant in person.

Mr. Kimanthi Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Evelyne Nyauke – Court Assistant