



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL NO. 27 OF 2020**

**CHARLES MANDAH ALIAS MASH.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal from the judgment of Honorable C.R.T Ateya Senior Resident Magistrate in Iten Senior Principal Magistrate's Court Criminal Case No. 536 of 2019 delivered on 27<sup>th</sup> February, 2020)**

**JUDGMENT**

*CHARLES MANDAH alias MASH*, was charged in the lower court with the offence of being in possession of Narcotic Drugs (Bhang) contrary to *Section 3(1(a))* as read with *Section 3(1) (b)* of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 2010.

The particulars of this offence are that on the 11<sup>th</sup> day of August 2019 at about 11.30 hours in Iten Township within Elgeyo Marakwet County, the appellant herein was found in possession of Narcotic drug (Bhang) to wit

one hundred and six and a half (106.5) stick rolls, and two dry brooms of approximate weight 600 grams, valued at Kshs.15,900/- in contravention of the said Act.

The prosecution case is that PW-1 and PW-2 who at the time of the alleged offence were stationed at Iten police station, were on 11/8/2019 at about 11.30 a.m on patrol in company of two other officers namely PC Odot and PC Ouma. They went to Stopit Bar. They went through a corridor to the rear side where there was a perimeter wall. The appellant herein and another person were seated on the said wall and when they saw the police officers they jumped down. One ran off leaving behind the appellant. The appellant was well known to PW-1. PW-1 called him and he went to where the officers were. He was trembling and looking suspicious. He was asked what was wrong and did not answer. PW-1 told him to lift up his shirt. He did so and exposed something that was in a khaki paper, hidden in his underpant. PW-1 removed it. Upon opening the same they noted there were 106 rolls of cigarettes like substance of which they suspected was bhang. They were held together by an elastic band. They decided to search his house. The appellant led them to his house at Savana area.

When they got there they called IP Peter Katambiri to join them. He joined them and the house was opened for a search. It was a one room. They started searching at the sofa set. They got rolling papers. The bottom of the sofa set was cut and inside there were two brooms of dry plant material of which they suspected was bhang. There was also a jungle shirt and a knife in a red sheath. Other items found were two pairs of scissors and a tool used for making rolls. The appellant was taken with the items to the police station.

On 20/9/2019 PW-1 took the two brooms of the dry plant material and 107 rolls of dry plant material to the Government chemist Kisumu laboratory for examination. It was examined and a report made to the effect that it is cannabis which is included in the first schedule of the *Narcotic Drugs and Psychotropic Substance (Control) Act, 1994*.

The recovered items and the report from the Government chemist were produced in court as exhibits.

The appellant in his defence stated that he used to operate a Bodaboda. On 11/8/2019 he woke up and went to church. He does not work on a Sunday. After church he attended chama and then took his motor cycle for service. He decided to go for a newspaper and passed behind AIC church. It is while there that he was called by PW-1. He had known him since 2017. PW-1 was his customer and the appellant had taken him to Kipsoen at night for a whole week. He owed him 1,500/-. Later PW-1 called him and he took him to Singore at night. The appellant waited for him for about an hour and decided to leave as he got scared. PW-1 called him that night for about ten times. The appellant told him to get other means and he said it was okay. For about 3 months they never met till the day of the alleged offence. PW-1 said he recalls what the appellant had done to him. He alleged the appellant had become rude. Suddenly two officers appeared with two handcuffed suspects. PW-1 said he had warrant of arrest against the appellant and he was also arrested. When they got to Posta he was asked where he was living. He led the entire group there. He opened the door. They entered and turned the mattress. They opened the

cupboard. PW-1 and PC Ouma then went outside. When they returned they told the appellant to close the door. Neighbours turned up at the scene. The appellant went with PC Titus Kamunya. The rest remained behind and they waited for them. The other two officers joined them without the suspects they had. They had a luggage with them. The appellant was handcuffed and taken to the police station. He was later charged.

The trial magistrate evaluated the evidence and found the appellant guilty of the offence charged with. He was convicted and sentenced to serve 10 years in prison. The appellant dissatisfied with the said conviction and sentence appealed to this court on the grounds that:-

1. He did not plead guilty to the offence.
2. The sentence was harsh and the alleged Narcotic were not taken to government chemist for analysis.
3. The Investigating officer did not give evidence and ascertain the house in which the alleged Narcotic drugs were recovered from.
4. The prosecution evidence was not corroborated.

The appellant filed written submissions while the prosecution submitted orally.

I have re-evaluated the evidence on record, including the appellant's defence. I have as well considered the judgment made and the meted sentence.

The evidence of PW-1 is well corroborated by the evidence of PW-2 in that the appellant herein had 106 ½ rolls of cannabis sativa, hidden under the front part of his pant. The two brooms of a dry plant material and other recovered items used for making rolls, were got in his house. The evidence by the two police officers is consistent on where each item was recovered from. I find the evidence reliable, cogent and highly convincing as true. There is no cause for doubting its truth. There is a report from government chemist showing the rolls and the brooms of the dry plant material were examined and found to be of Narcotic drug (Bhang). The ingredients for the offence were therefore well established. There is no dispute the appellant led the officers to his house and from therein the two brooms of dry plant material and items used to roll the material were recovered.

The appellant defence was an afterthought. It was not covered during cross examination and is not corroborated. It raises no doubt on the truth of the prosecution case. The defence was rightly dismissed.

Ten years sentence considering that the drug was not solely for personal consumption given the quantity, but for sale, which shows the appellant

was a dealer, and would therefore have attracted a sentence of 20 years in prison, was lenient enough. There is no need of disturbing the same.

The appeal therefore lacks merit and is hereby dismissed.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 23<sup>rd</sup> day of December, 2020.**

In the presence of:-

The appellant

Ms Limo for state

Ms Gladys - Court assistant