



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA. NO. 237 OF 2017

MICHAEL MUENDO MANGI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

INTRODUCTION

1. The Appellant was charged with possession of cannabis contrary to Section 3 (1) (2) (a) of Narcotic and Psychotropic Substance Act No. 4 of 1994.
2. Particulars being that on the 28th November, 2016 at Emali Police Station in Nzau District within Makueni County, **MICHAEL MUENDO MAINGI** was found in possession of one (1) roll of cannabis of street value of Kshs.20/= in contravention to the stated Act.
3. He pleaded guilty to the charge and after conviction he did mitigation and was sentenced to serve 5 years imprisonment.
4. Being aggrieved by the aforesaid decision, he lodged an appeal and set out in the memorandum the following grounds:-
 - 1) **THAT** he is not in dispute of the conviction but only prays to the Hon. Court for leniency and more so allow his mitigation out of time having not done so within the stipulated period as provided as by the law due to the fact his relatives had promised to hire a legal counsel to pursue the same but only come to learn later that they were unable to raise the required fees for the service hence caused delay.
 - 2) **THAT** he is just a first offender who has never been caught in the wrong side of the law before hence prays for leniency having learnt his lesson and regret dearly for having not known that possessing the same is against the rules of law.
 - 3) **THAT** he is deeply remorseful and repentant and promise not to repeat the mistake again.
 - 4) **THAT** I plead to the Hon. Court to review the sentence under the powers conferred to it by the Constitution of Kenya under Article 165 (7) and thus substitute the same with the non-custodial sentence under the community service order (C.S.O) or at least reduce the sentence since the one imposed by the trial court was harsh and excessive compared to the offence charged.
5. The entire appeal is on sentence as the Appellant does not challenge conviction.
6. The record of court shows the proceedings before trial court was as follows:-
7. **Prosecutor:** I am ready with the facts. Charge read over and explained to the accused person in Kiswahili who replies: "*it is true.*"
8. **Court:** A plea of guilty entered.
9. **Prosecutor:** On 28/11/2016 at around 2.00 p.m. the accused person who had been arrested for causing disturbance at his mother's home was brought by the chief one Fredrick Wilson the area chief Masae location.
10. Upon being re-arrested at Emali Police Station he was searched and found with one roll of bhang on his left side of his pocket. The mother who had brought the accused for creating disturbance withdrew the charges but the accused was charged for being in possession of

bhang. The one roll of bhang is hereby produced as exhibit no. 1.

11. **Accused:** The facts are correct.

12. **Court:** Accused convicted on his own plea of guilty.

13. **Mitigation:** I perform hard work and I urge the court to forgive me. I won't repeat the offence.

14. **Court:** Matter referred for Probation Officer's Report/CROR.

15. **Court:** I have considered the Probation Officer's Report and the accused mitigation. It appears that he needs a longer sentence so that he can learn a trade and stop harassing members of his family. The accused is sentenced to serve five years imprisonment.

ANALYSIS AND DETERMINATION

16. Section 3(1) of the Act (Narcotic and Psychotropic Substance contrary to Act No. 4 of 1994) codifies the offence of possession of any narcotic drug which includes cannabis sativa or possession of psychotropic substances.

17. Section 3(2) (a) of the Act prescribes the sentence for possession of cannabis sativa while Section 3(2)(b) prescribes the sentence for possession of other narcotic drugs and psychotropic substances. Am concerned here with punishment for possession of cannabis sativa. Section 3(2) (a) which provides:

“Any person guilty of an offence under subsection (1) shall be liable:

(a) In respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years.”

18. The Appellant was sentenced to serve 5 years which is half of the prescribed maximum penalty. The court notes that the Appellant pleaded guilty to the charge and saved courts time in trial. The court also notes the quantum of subject matter which was too little. The Appellant has learnt a lesson and he has a trade now which he can use in nation building.

19. Thus the court is inclined to give him a second chance thus makes the following orders;

- Appeal is allowed on sentence and same is substituted with a conditional release provided the Appellant does not commit any other offence in the next 12 months.

SIGNED, DATED AND DELIVERED THIS 25TH DAY OF SEPTEMBER, 2018, IN OPEN COURT.

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C.KARIUKI

JUDGE