

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MARSABIT

CRIMINAL APPEAL NO.31 OF 2016

HASSAN OSMAN CHITTO APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in criminal case No.340 of 2012 of the Principal Magistrate's Court at Marsabit by Hon. A.G Munene – Ag. Senior Resident Magistrate)

JUDGMENT

The appellant, **HASSAN OSMAN CHITTO**, was convicted for the offence of being in possession of narcotic drugs (cannabis) contrary to section 3(1) (2) (a) (sic) of the Narcotic Drugs and Psychotropic Substances Control Act of 1994.

The particulars of the offence were that on 13th December 2012 at **Marsabit** township in Marsabit Central District of Marsabit County, he was found in possession of 36 rolls (15.5 grams) of cannabis valued at Kshs. 720/= which was not in medicinal preparation form.

He pleaded guilty to the offence and was sentenced to serve twelve years imprisonment. He has appealed against the sentence.

The charge was erroneously drafted. It ought to have read contrary to "**section 3(1) as read with section 3(2) ...**"

The appellant understood the charge before pleading to it. He was not prejudiced in any way and the defect is curable under section 382 of the Criminal Procedure Code.

Section 3(2) of the Narcotic drugs and Psychotropic Substances Control Act provides as follows:

A 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;

In sentencing the appellant, the learned trial magistrate approached the issue as if the prescribed sentence was the minimum whereas it was the maximum. The maximum sentence where the cannabis was for personal consumption was 10 years and in every other case to imprisonment for twenty years. It was erroneous for the learned trial magistrate to conclude that 15.5 grams was not for personal consumption without evidence to the contrary.

I agree with the appellant that in the circumstances of this case, the sentence was manifestly harsh. He has already served four years imprisonment. In my view, this is adequate punishment for the offence. I therefore reduce the sentence to the period served. The appellant to be set at liberty forthwith unless if otherwise lawfully held.

DATED at Marsabit this 19th day of April, 2017

KIARIE WAWERU KIARIE

JUDGE