

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 21 OF 2014

(From original conviction and sentence in Kigumo PM Criminal Case No 105 of 2014 – D. Orimba, SPM)

SAMUEL MWANGI GAKUYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **Samuel Mwangi Gakuya**, pleaded guilty to and was convicted of the offence charged of **cultivating bhang** contrary to **section 3(1)** as read with **section 3(2) (a)** of the ***Narcotic Drugs and Psychotropic Substances (Control) Act, 1994***. The particulars of the offence alleged that on 18/01/2014 at Kanderendu Village in Kigumo District within Murang'a County he was found cultivating ten (10) plants of bhang.

He was fined KShs 200,000/00 and in default of payment to serve six (6) years imprisonment. He is serving the default sentence.

2. It is immediately obvious that the offence under **section 3(1)** as read with **section 3(2) (a)** of the Act is one of **possession** of narcotic drugs or psychotropic substances. The offence disclosed by the particulars given in the charge (and also as disclosed by the facts given by the prosecution and admitted by the Appellant) was one of **cultivation** of prohibited plants under **section 6** of the Act. The charge facing the Appellant was never amended.

3. As the particulars of the offence did not disclose the offence charged, the charge was incurably defective, and learned prosecution counsel properly did not support the conviction.

4. In the event, I will allow this appeal in its entirety. The conviction is hereby quashed and the sentence imposed set aside. The Appellant shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 18TH DAY OF MAY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 19TH DAY OF MAY 2017