



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HIGH COURT CRIMINAL APPEAL NO. 132 OF 2017

JOSEPH NDOLO APPELLANT

-VERSUS-

REPUBLIC PROSECUTION

JUDGEMENT

1. The appellant was charged with offence of **BEING IN POSSESSION OF NARCOTIC DRUGS CONTRARY TO SECTION 3(1) AS READ WITH SECTION 3(2) OF THE NARCOTIC AND PSYCHOTROPIC SUBSTANCE CONTROL ACT NO. 4 OF 1994.**

2. On the 6th day of September 2015, at Mtito Andei Township in Kibwezi Sub-county, Joseph Ndolo was found being in possession of narcotic drug namely *cannabis sativa* (bhang) to wit one roll with a street value of Kshs.20/= which was not inform of medicinal preparation.

3. He pleaded guilty on his own plea and he was sentenced to serve six years imprisonment.

4. Being aggrieved with the above decision, he appealed and set out six grounds of appeal which were mere challenge of the sentence and mitigation.

5. He later filed amended grounds of appeal setting out four grounds namely:-

*a) **That**, he is a first offender hence pray for leniency.*

*b) **That** he deeply regret my act, remorseful and repentant.*

*c) **That**, he the sole bread winner in my family taking care of my aged disabled mother and my family of three.*

*d) **That**, he has embraced total reformation via the prison reform and rehabilitation integrated correctional services.*

6. The appellant filed submissions which he relied on and the state responded orally.

7. The facts of the case are reflected on record as follows:-

On 07/09/2015, the appellant was taken to court on a charge herein above. When the charge was read and explained to him, he stated that “ni kweli” (it is true). A plea of guilty was entered.

8. The facts were read as follows:-

***“On 06/09/2015, police officers were on patrol at night at Mtito Andei. They came across accused who looked suspicious. They stopped and searched accused. One roll of bhang was found in his pockets. He was arrested and charged*”**

9. Same roll was produced. The appellant answered to the facts that same were true. The record showed that he was a first offender. In mitigation, he sought forgiveness.

10. After reviewing probation report, the court found appellant unsuitable for a non-custodial sentence. Thus he was jailed to serve six years imprisonment on 16/09/2015.

11. In his submissions he states that he was a first offender and hence prayed to court to treat him with leniency. He had never committed any crime in the society as was evidenced in the trial proceedings. He prayed to court to treat him with the accepted standards of a first offender.

12. He deeply regretted his act, which he committed and was fully repentant. He said that he has fully gone through self-reflection of his action and was deeply remorseful. He therefore asked for soft touch of the honourable court.

13. He stated that prior to his arrest and subsequent conviction he was the sole bread winner of his disabled mother, and his own family of three consisting of a house wife and two children the eldest being in class one.

14. He also took care of his young brothers and sisters by supporting in their education. He came from a poor family that lives on hand to mouth from the proceeds of his casual efforts.

15. He prayed to court to have mercy upon his situation since he was repentant had undergone untold suffering. He said that, the time he has to spend in prison, the future of the said siblings would be at stake and they will miss life opportunities since they will lack the, much needed education to be able to secure proper skills or jobs.

16. Further he stated that, when the subordinate court decided otherwise that he be given a custodial sentence to learn a trade, he fully embraced the prison reforms systems by joining prison industries where he has had a Grade 3 and 2 in carpentry. He has now fully reformed and he is ready to join the community a changed person.

17. The state opposed appeal and urged the court to uphold conviction and sentence. It was urged that if appellant is released, he will continue to abuse the same.

18. I have looked at the charge and the quantum of the substance found in his possession (20 grams).

19. I have also looked at the probation report. He is a first offender and a trained masonry. He was 27 years when he was arrested. He has been in custody for about 2 years. He pleads that he has changed and he regret the act of possessing and consuming bhang. He seeks to be released.

20. The court finds that it is only fair that he be given a conditional release to give him a chance to join in nation building.

21. The court therefore makes the following orders:-

a)The conviction is affirmed but the sentence is suspended and the appellant is to be released on condition that he will not commit any offence in the next twelve (12) months from dates herein.

b) Should he violate the above condition, he will be arrested and taken to jail to serve the balance of his sentence.

SIGNED, DATED AND DELIVERED THIS 27TH DAY OF JULY, 2017.

C. KARIUKI

JUDGE

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