



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VOI
CRIMINAL APPEAL NO 23 OF 2017

JACKSON RANGASI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case Number 958 of 2016 in the Senior Principal Magistrate's Court at Voi delivered by Hon M. Onkoba(SRM) on 6th December 2016)

JUDGMENT

INTRODUCTION

1. The Appellant herein, Jackson Rangasi was charged with the offence of being in possession of narcotic drugs contrary to Section 3(1) as read with Section 3(2) of the Narcotic Drugs and Psychotropic Substances Control Act No 4 of 1994. The particulars of the said Charge were that on the 5th day of November 2016 at around 1100 hours in Ilemganyi Village, of Taita Taveta County he was found in possession of narcotic drugs namely *cannabis* to wit half kilograms (**sic**)of *cannabis sativa* with a street value of Kshs 2,000/= in contravention of the said Act.
2. The Learned Trial Magistrate Hon M. Onkoba, Senior Resident Magistrate,convicted him and sentenced him to five (5) years imprisonment.
3. Being dissatisfied with the said judgment, on 26th April 2017 the Appellant filed a Notice of Motion application seeking leave to have his Appeal heard out of time, which application was allowed. His Appeal was then deemed to have been duly filed and served. He relied on five (5) Grounds of Appeal. He filed his Written Submissions on 13th June 2017.
4. It did appear to this court, which was confirmed by the State in its Written Submissions dated 10th October 2017 and filed on 11th October 2017 that the Appellant was only appealing against the sentence that was meted upon him by the Learned Trial Magistrate as he had pleaded guilty to the charge.

LEGAL ANALYSIS

5. Section 348 of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides as follows:-

“No appeal shall be allowed in the case of an accused who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

6. In his Mitigation Grounds of Appeal, the Appellant contended that he pleaded guilty at the first instance, that he lost his wife and parents, that he was asthmatic and that he was suffering a lot on account of his age of fifty seven (57) years. Clearly, this was a mitigation that ought to have been directed to the Trial Court and not to this court.
7. Be that as it may, the Appellant was not represented by counsel in the lower court and this appeal court. The State pointed out that the amount he was found in possession with could not have been intended for his sole use but rather it was for sale. It therefore submitted that the sentence he was liable to upon conviction was twenty (20) years imprisonment.
8. Section 3(2)(a) of the said Narcotics and Psychotropic Substances Control Act stipulates as follows:-
- “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.”**
9. The State rightly stated that the sentence to be imposed upon conviction under the aforesaid Section is not the mandatory sentence. Rather, it is the maximum sentence that a trial court can impose on a convicted person under that Section. It relied on the case of Opoya vs Uganda in this regard. However, it did not attach a copy of the said authority or give full citation of the same.
10. The State relied on the cases of Francis Mbogua M’ringera vs Republic [2014] eKLR where Lesiit J affirmed a sentence of three (3) years where the appellant therein was found in possession with 3,000 stems with a street value of 16,960/= and Paul Chacha Magaiwa vs Republic [2015] eKLR where the appellant therein was sentenced to five (5) years for having been in possession of one hundred and thirteen (113) kgs of bhang with a value of 153,000/=.
11. In the case of Lawrence Mitelian Ngaluma vs Republic [2017] eKLR, this very court upheld a sentence of five (5) years where the appellant therein was convicted of trafficking 360kgs with a street value of Kshs 360,000/=(three hundred and sixty thousand).
12. This court also agreed with the State’s submissions that although Section 3(2) (a) of the Narcotics and Psychotropic Substances Control Act did not provide for a fine, Section 26(3) of the Penal Code Cap 63 (Laws of Kenya) stipulated that an offender could pay a reasonable fine in substitution for imprisonment.
13. It was apparent that the Appellant herein did not intend to consume the half (1/2) kilogramme of cannabis all by himself. The same must have been intended for sale. Despite the Appellant having admitted to having committed the offence, this court nonetheless found that it could exercise its discretion to reduce the sentence that was meted upon him because the sentence provided under Section 3(2)(b) of the Narcotics and Psychotropic Substances Control Act was the maximum and not the mandatory sentence and he ought to benefit from a reduction of the sentence.
14. Accordingly, having considered the Mitigation Grounds and the Written Submission by both the Appellant and the State, this court came to the firm conclusion that as the value of the bhang was Kshs 2,000/= and the Appellant admitted to the charge at the first instance thus saving the court precious judicial time, a sentence of five (5) years imprisonment was harsh, severe and manifestly excessive in the circumstances. Instead, it found and held that twelve (12) months imprisonment from the date the Appellant was convicted was sufficient punishment.
15. This court was apprehensive that any additional punishment than the Appellant had already served vis-à-vis the said value of bhang would only be counter-productive as it had the potential of hardening him to commit more serious crimes in future.
16. It was this court’s view that this was not a suitable case to substitute the sentence of imprisonment with a fine as the *cannabis* the Appellant was found in possession with did not appear to have been intended for own consumption. Rather it appeared to have been intended for commercial purposes.

DISPOSITION

17. For the foregoing reasons, this court hereby allows the Appellant's Appeal that was lodged on 26th April 2017 on sentence only but declines to quash the conviction against him as it was lawful and fitting. In the circumstances, this court hereby sets aside and /or vacates the sentence of five (5) years imprisonment that was imposed upon the Appellant by the Learned Trial Magistrate and replaces the same with imprisonment for twelve (12) months which will run from the date he was convicted.

18. As he is only remaining about two (2) weeks to complete his twelve (12) months' period of imprisonment, it is hereby directed that the Appellant be set free forthwith unless held or detained for any other lawful reason.

19. It is so ordered.

DATED and DELIVERED at VOI this 23rd day of November 2017

J. KAMAU

JUDGE

In the presence of:-

Jackson Rangasi- Appellant

Miss Anyumba for State

Susan Sarikoki- Court Clerk