



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 83 OF 2016**

**(From original sentence in Murang'a CM Criminal Case No 747 of 2015 – J J Masiga, RM)**

ANNA NGINA MBUVI .....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**J U D G M E N T**

1. The Appellant, **Anna Ngina Mbuvi**, was convicted upon her own plea of **being in possession of narcotic drugs** contrary to **section 3(1) and (2)(a)** of the **Narcotic Drugs and Psychotropic Substances (Control) Act, No 4 of 1994**. It was alleged in the charge that on 03/07/2015 at Ngatho Village in Gatanga District within Murang'a County, she was found in possession of 246 grammes of **cannabis sativa** (bhang) valued at KShs 2,780/00 which was not in the form of a medical preparation. She was sentenced to serve four (4) years imprisonment.

2. The Appellant has appealed against sentence only, upon the ground that the same was harsh and excessive in her particular circumstances. Those circumstances are that she was a first offender who pleaded guilty and was remorseful; that she is a widow who was raising four school going children; that she has medical conditions that require constant attention; and that she is now committed to leading an upright life and bring up her children properly.

3. I have perused the record of the trial court. The facts given to court by the prosecution disclose a flagrant breach of the Appellant's constitutional right to privacy under **Article 31** of the **Constitution of Kenya, 2010**. That right includes the right not to have her person, home or property searched.

4. The facts given were that on 03/07/2015 at about 13.00 hours police officers were on patrol within Gathu Village in Gatanga when they were tipped off that the Appellant was a **notorious** cannabis peddler. The police then raided her house and conducted a search therein and purportedly recovered the cannabis possession of which the Appellant was charged with.

5. The prosecution never explained why the police did not first obtain a search warrant from a magistrate's court to enter and search the Appellant's house. Impromptu entry and searches of people's houses and homes by the police (without necessary warrants duly issued by a court of law) in this day and age is not acceptable at all. It is an invasion of people's privacy that should not be tolerated. Had the Appellant appealed against the conviction I would not have had any difficulty in allowing the appeal upon the ground that the search that recovered the drugs was illegal and a grave violation of the Appellant's constitutional right to privacy. But she has not so appealed.

6. As for her appeal against the sentence, I will partially allow the same. A sentence of four (4) years imprisonment for a first offender who pleaded guilty and was remorseful, and a widowed mother who was raising four children, was manifestly harsh and excessive.

7. I will set aside the sentence of four (4) years imprisonment imposed and substitute therefor a sentence of two (2) years and five (5) months imprisonment, effective from the date of sentencing by the trial court, 07/07/2015. That will mean that the Appellant will have already served that sentence, and will enable her to be set at liberty forthwith unless otherwise lawfully held. To that limited extent only is the appeal against sentence allowed. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 27<sup>TH</sup> DAY OF DECEMBER 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 29<sup>TH</sup> DAY OF DECEMBER 2017**