



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 15 OF 2013

JOSEPH KAMITI MWANINI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

An appeal from the judgment and sentence in original Mukuruweini SPM CR 19/2013

delivered on 1/2/2013 by M.W. Murage Acting Senior Resident Magistrate)

JUDGMENT

The appellant **Joseph Kamiti Mwaniki** was charged in the Magistrate's court with the offence of being in possession of Narcotic drugs contrary to section **3(1) (3)** of the Narcotic drugs and psychotropic substances Control **Act No.4 of 1994**.

The particulars of the offence are that on 31st day of January, 2013 at Thangatu location in Nyeri County he was found in possession of 2 stones of cannabis sativa which was not in medicinal preparation. He pleaded guilty to the charge when he appeared in court on 1/2/2013 before M.W.Murage Ag.SPM. The facts as narrated by the prosecution was that the area chief and Administration police officer visited the home of the appellant. He was not in but shortly after came. They went into the house where a search was conducted and the 2 stones of bhang were recovered. He was then charged with present offence. The appellant admitted the facts and was convicted on own plea of guilty and sentenced to seven (7) years imprisonment. He was a first offender and had a family which fact he stated in mitigation.

The appellant brought this appeal against conviction and sentence andthe complaint against conviction and instead submitted that the sentence of seven years imprisonment was excessive.

The appellant was charged with the offence of being in possession of Narcotic drug contrary to section 3(1) (2) of the Narcotic and Psychotropic substances (control) Act

3(1) subject to section 3 any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.

(2) A person guilty of an offence under section (1) shall be liable

(a) in respect of cannabis where the person satisfies the court then the cannabis was intended solely for his own consumption to imprisonment for 10 years and in every other case to

imprisonment for twenty years”

The appellant submitted that the sentence of seven years imprisonment imposed is excessive and that this court should revise it. The principles upon which an appeal court can interfere with the magistrate’s discretion in sentencing were well stated in Nelson – V – Republic 1970 EA 599 as follows

“the principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the ground that if the members of court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with discretion exercised by the trial judge unless as was said in

“James versus Ray 1950 18 EA 147 it is evident that the judge acted upon wrong principles or overlooked material factor. To this we add the third conviction normally that the sentence is manifestly excessive in view of all the circumstances of the case”

In the present appeal the maximum sentence for the offence the appellant was charged with was 10 years. The trial magistrate considered that the appellant was a first offender and in particular found that the cannabis was for own consumption. There is no evidence that he acted upon wrong principles. Indeed he considered all the factors. I do not find the sentence of seven (7) years manifesting excessive. I therefore find no merit in the appeal and is dismissed uphold the sentence of seven (7) years imprisonment against the appellant.

Dated at Nyeri this 10/11/2015

31/3/2016

Before – Hon S Riechi – Judge

Catherine – C/clerk

Appellant – present

Njue for state

Court – judgment read over and delivered in open court in presence of the appellant and Mr. Njue for state this 31st day of March, 2016.

S RIECHI

JUDGE