

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.231 OF 2013

(An Appeal arising out of the conviction and sentence of Hon. W. Ngumi – Ag. SRM delivered on 3rd December 2013 in Githunguri SPM. CR. Case No.920 of 2013)

ROBERT KAMAU NDEGWA....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, Robert Kamau Ndegwa was charged with the offence of **being in possession of Narcotic Drugs** contrary to **Section 3(1)** as read with **Section 3(2)(a)** of the **Narcotic Drugs and Psychotropic Substances Control Act**. The particulars of the offence were that on 6th October 2013 at Ikinu Trading Centre within Kiambu County, the Appellant was found in possession of 60 rolls of *Cannabis Sativa* which was not in medical preparation form. When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was convicted as charged and sentenced to serve seven (7) years imprisonment. The Appellant was aggrieved by the sentence imposed on him. He has appealed to this court.

In his petition of appeal, the Appellant argued that the sentence that was imposed on him was harsh and excessive in the circumstances. He urged the court to reduce the custodial sentence that was imposed on him. He stated that he was the sole bread winner of his family and his elderly parents. During the hearing of the appeal, the Appellant stated that while in prison he had learnt a trade – upholstery – which he would utilize upon his release from prison. He told the court that while in prison, his health has deteriorated. He urged the court to take these facts into consideration and allow his appeal. Ms. Atina for the State opposed the appeal. She submitted that the Appellant was a habitual offender who had previously been convicted of the same offence and sentenced to serve three (3) years imprisonment. She explained that the sentence imposed on the Appellant was legal. The court should not interfere with it. The Appellant conceded that indeed he was a repeat offender but urged the court to take into consideration that he was now reformed and would not commit any other offence if he is released.

When the trial magistrate sentenced the Appellant to serve the custodial sentence, he was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Appellant. In the present appeal, it was clear to this court that the trial court sentenced the Appellant to serve a legal sentence. However, this court has taken into consideration the fact that the Appellant appears to be remorseful and has learnt his lesson in the period that he has been in prison. He has learnt a trade which he will utilize and make him a useful member of the society upon his release. Although the Appellant is a repeat offender, this court has taken into consideration the fact that the period of more than 2½ years that the Appellant has been in prison is sufficient punishment for him.

In the premises therefore, his appeal on sentence is hereby allowed and as a result of which the custodial sentence imposed on him by the trial court is commuted to the period served. He is ordered set at liberty

forthwith unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF APRIL 2016

L. KIMARU

JUDGE