



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO.87 OF 2011**

**SAMMY NJUGUNA WAGURA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

***(Appeal from the Judgment of the Chief Magistrate's Court at Nakuru Hon. W. Juma - Chief Magistrate delivered on the 21<sup>st</sup> March, 2016 in CMCR Case No. 1023 of 2011)***

**RULING**

The appellant herein had been charged with Being in Possession of a Narcotic Drug Contrary to the Narcotic Drugs and Psychotropic Substances Act. The particulars alleges that the appellant was found in possession of one roll of bhang worth Ksh 10/=. The appellant pleaded guilty to the charge and was sentenced to serve ten (10) years imprisonment. He filed this appeal.

The appellant has told the court that he does not challenge his conviction. He only appeals as against his ten year sentence which he terms excessive.

Mr Chigiti for the DPP concedes the appeal in so far as sentence is concerned. I have perused the record of the proceedings before the lower court. The appellant did plead guilty to the charge. Thereafter the facts were read out to him. The appellant maintained his guilty plea saying:-

***“Fact are true. I had a roll of cannabis”***

The learned trial magistrate proceeded to convict him. I have noted that the prosecution did produce the roll of plant material as an exhibit in the lower court. However no report from the Government Chemist was produced to prove that the roll found on the appellant was indeed *Cannabis Sativa*. The onus is on the prosecution to prove each element of an offence beyond reasonable doubt. The fact that the appellant pleaded ‘**guilty**’ did not absolve the prosecution from its obligations to tender proof that the plant material was indeed *cannabis sativa*. Failure to tender such proof means that the charge was not proved to the required legal standard.

In the circumstance the conviction of the appellant had no basis and was erroneous. I therefore quash that conviction. The ten (10) year sentence is also set aside. This appeal succeeds and is allowed. The appellant is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated this 21<sup>st</sup> day of November, 2016.**

**Maureen A. Odero**

**Judge**