



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 168 OF 2015**

**ANTHONY MAINA KARANJA ..... APPELLANT**

**VERSUS**

**REPUBLIC .....STATE**

**JUDGEMENT**

The appellant **ANTHONY MAINA KARANJA** has filed this appeal. The appellant informed the court that he did not seek to challenge his Conviction. He only wished to appeal against the sentence imposed by the trial court.

The appellant was arraigned before the lower court on 19/7/2010 facing a charge of **POSSESSION OF NARCOTIC DRUGS CONTRARY TO SECTION 3 (1) as read with SECTION 3(2) OF THE NARCOTIC DRUGS AND PSYCHOTROHIC SUBSTANCES CONTROL ACT, 1994.**

The particulars of the charge were that:

***“On the 29<sup>th</sup> day of June 2015 at Bisman Trading Centre within Nyandarua County was found in possession of Cannabis Sativa (bhang) to wit 5 grames not under medical preparation”***

The appellant entered a plea of Guilty to the charge. The facts were read out and the appellant accepted the facts as true. He was then convicted on his own plea of Guilty and sentenced to serve 3½ years in prison.

As stated earlier the appellant only challenged his sentence terming it as harsh and excessive. He did not wish to challenge his conviction. The learned State Counsel **MR. CHIGITI** opposed the appeal.

This being a court of first appeal and in the supervisory role of a High Court, I am obliged to satisfy myself that the conviction was indeed proper.

The appellant did plead guilty to the charge as read out to him. Thereafter the prosecutor read out the facts to the appellant. The plant material was produced as an exhibit **P exh 1**. However no evidence was tendered to prove that the plant material was in fact *Cannabis Sativa*. No report from the Government Chemist was produced as an exhibit. The onus lies on the prosecution to prove each aspect of the charge beyond reasonable doubt. The fact that the appellant pleaded guilty to the offence does not in any way absolve the prosecution of this burden of proof. Failure to tender proof that the plant material was bhang renders the charge unproven. Therefore in those circumstances the appellant’s conviction was erroneous. I therefore quash the appellant’s conviction and set aside the 3½ years sentence imposed on him. The appellant is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated in Nakuru this 20<sup>th</sup> day of December, 2016.**

**Maureen A. Odera**

**Judge**