

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 242 OF 2010

JOHN DANIEL KARUMA APPELLANT

VERSUS

REPUBLICSTATE

(Appeal from the Sentence of the Chief Magistrate's Court at Nakuru Hon. W. Juma –Chief Magistrate delivered on the 29th July, 2010 in CMCR Case No. 3783 of 2010)

JUDGEMENT

The appellant **JOHN DANIEL KARUMA** 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 18th day of July, 2010 at Elburgon Village Bahati in Nakuru North District of the Rift Valley Province was found in possession of Cannabis Sativa (bhang) to with 14 rolls of street value Ksh 140 in contravention of the Act”

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 twenty (20) year's imprisonment.

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. MOTENDE** conceded the appeal with respect to the sentence.

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. The matter was then reserved for reading of the facts. On 20/7/2010 the prosecutor read out the facts to the appellant. The 14 rolls of plant material were 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 twenty (20) year sentence imposed on him. The appellant is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated in Nakuru this 19th day of December, 2016.

Appellant in person.

Mr. Motende for DPP

Maureen A. Odero

Judge