

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 34 OF 2014

NGANDI NZOU MUKONZA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged in the subordinate court with being in possession of cannabis sativa contrary to section 3 (I)(II)(A) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994. The particulars of offence were that on the 11th May 2014, at Itoloni Location in Migwani District of Kitui County was found in possession of 34 sachets of cannabis sativa with street value of Ksh. 680/= which was not medically prepared.

He was recorded as having pleaded guilty. He was thus convicted and sentenced to serve 5 years imprisonment.

Aggrieved by the decision of the trial court the appellant filed an initial appeal on 23/05/2014. later he filed a petition of appeal with additional grounds on 24/09/2014. In both petition of appeal, the appellant was challenging the sentence. The appellant also filed written submissions which he relied upon during the hearing of appeal. I have perused and considered the written submissions filed.

Learned Prosecuting Counsel Mr. Orwa opposed the appeal. He submitted that the two petitions of appeal were contradictory in that the later petition talks of review of sentence. Counsel submitted that it was very clear that the appellant had pleaded guilty. The appellant was also given a chance to mitigate. The sentence was within the law. It was a proper sentence. Counsel argued that this appeal filed by the appellant is an afterthought.

In response, to the prosecution counsels submissions, the appellant submitted that she was asking the court to be lenient to him.

This is a first appeal. I am required to re-examined the record of the trial court and come to my own conclusions. I have perused the record. The charge was read to the appellant in Kamba language. He admitted the same . The facts were later given by the prosecutor and he also said the facts were correct. The plea of guilty in my view was unequivocal. The appellant was thus properly convicted.

This appeal is on sentence. Though the prosecuting counsel has argued that a review of sentence and an appeal on sentence are two different things, my view is that they are one and the same thing. It is merely a question of the choice of words used. They all amount to a request for the court to consider the appropriateness of the sentence imposed. The appellant was sentenced to serve 5 years imprisonment. Before he was sentenced, he was given a chance to mitigate. And he stated that he was retired Ministry of Public Works Officer. He requested to leniency. There is no suggestion that the sentence is illegal. In my view, sentencing is a discretion conferred on a trial court. In the circumstances of this case I find that a deterrent sentence was called as the appellant appeared to be selling the illegal drug to other members of the public. As such the offence was sufficiently serious to attract a deterrent sentence.

To conclude, I find no merits in the appeal. I dismiss the appeal and uphold both the conviction and sentence.

Dated and delivered at Garissa this 16th day of February, 2015.

GEORGE DULU

JUDGE