



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL NO. 103 OF 2012**

**THOMAS MWANZIA MUSILA ..... APPELLANT**

**VERSUS**

**REPUBLIC**

*(Being an appeal from the conviction and sentence of Hon. Mr H. Nyakweba Principal Magistrate delivered on 12/7/2012 in Makeni Principal Magistrate Criminal Case No. 103 of 2012)*

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*(Before Hon. B. Thurania Jaden J)*

**J U D G M E N T**

1. The Appellant, **Thomas Mwanzia Musila** was charged with the offence of being in possession of narcotic drugs (Bhang) contrary to **section 3 (1) (2) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994.**

The particulars of the offence were that on the 30<sup>th</sup> day of June 2013 at **Mitini Market, Kyang'a Sub-location, Wautu Location**, in **Kilungu District** within **Makeni County** was found being in possession of Cannabis Sativa (bhang) to wit fourteen (14) rolls which was not in medicinal preparation.

2. When the accused was arraigned before the trial court, he pleaded guilty to the charge. The Appellant was sentenced to seven (7) years imprisonment.
3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court on grounds that can be summarized as follows:-

**a. The Appellant did not understand the language used by the court.**

**b. That the charge sheet was defective.**

**c. That the plea was equivocal.**

**d. That the Appellant was charged under a non-existent statute.**

**e. The sentence of seven (7) years was harsh and excessive.**

4. During the hearing of the appeal, the Appellant relied on written submissions. The submissions

essentially expound on the grounds of appeal.

5. The appeal was opposed by the State. The learned counsel for the State referred the court to **section 382** of the **Criminal Procedure Code**. It was submitted that the sentence was within the law but conceded that the language used by the trial court was not reflected on the record.
6. A perusal of the lower court record reflects on all the dates the Appellant appeared in court, there was a court in court by the name **Faith Mbinya**. The language of interpretation is reflected on each of the dates as **English/Swahili/Kamba**. As stated by the court of Appeal in **Said Hassan Nuno v Republic (2010) eKLR:-**

**“We take judicial notice that one of the core duties of a court clerk is to offer interpretation services to accused or even to the court where it does not understand the language of the accused; or a witness to the case.”**

7. On whether the charge sheet is defective, it is noted that the particulars of the offence reflected 14 rolls Cannabis Sativa (bhang) as what was found in the Appellant’s possession. The charge was clear and unambiguous. It is noted that the Appellant pleaded guilty and therefore there was no need to prove the offence. Any provisions of the law that are not correctly reflected in the charge sheet is taken care of by **section 382** of the **Criminal Procedure Code** which states as follows:-

**“ Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complainant, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice.”**

8. The charge was read out to the Appellant who pleaded guilty. The facts were ready out and the Appellant admitted the same were correct. The trial court complied with all the procedures of plea taking as outlined in the celebrated case of **Adan Vs Republic (1973) EA 445** where the Court held:-

**i. The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.**

**ii. The accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded.**

**iii. The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.**

**iv. If the Accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.**

**v. If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused’s reply should be recorded.”**

9. The Appellant was nineteen years old at the time of the trial. The quantity of the bhang was 14 rolls. The sentence of seven (7) years was harsh and excessive. The Appellant had served over one year imprisonment by the time he was released on bail. Hopefully the Appellant has learnt a lesson.
10. With the foregoing, the appeal on conviction has no merits and is rejected. However, I reduce the sentence to the period already served.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 18<sup>th</sup> day of March 2015.**

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**B. THURANIRA JADEN**

**JUDGE**