

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 72 OF 2014

SAMUEL MWANGI NJOROGE...APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant was convicted upon his own plea of **being in possession of *cannabis sativa*** contrary to **section 3 (1)** as read with **(2) (a)** of the ***Narcotic Drugs and Psychotropic Substances Control Act, No 4 of 1994***. The particulars of the offence were that on 23rd November 2012 at about 8.00 am in Gatundu Sub-location within Murang'a County he was found in possession of about 500 grammes of *cannabis sativa* with a street value of KShs 600/00 which was not meant for medical preparation. He was sentenced to 6 years imprisonment. This was on 7th January 2013. He has appealed only against the sentence.

2. In his written submissions the Appellant has made a passionate plea for leniency. His mitigation to the trial Court was that he had 5 children, one of whom was sitting for KCPE and one in polytechnic. He and his wife did casual jobs to sustain and educate them.

3. The trial court considered the mitigation and called for a **Community Service Order** report. The court noted that the report was not favourable. The court further opined that the *cannabis sativa* found in the possession of the Appellant could not have been for his own consumption.

4. I have read the Community Service Order report which is in the trial court's record. It appears that the negative report was based principally upon the Appellant's relatives' negative view of him, and also his community's suspicion of him as an anti-social person. The fairly stiff sentence meted out by the trial court can be directly related to the negative report, which also stated that the Appellant was not a first offender and had been previously jailed for two-and-a-half years for a similar offence. It is however to be noted that the prosecutor had informed the court that he was a first offender and did not produce any records of any previous conviction. The court should have proceeded upon that basis.

5. A plea of guilty saves the court much time which would otherwise have been taken up by a trial. It should count in favour of an accused. It does not appear to have counted in this case.

6. I also cannot find on the record the basis upon which the trial court concluded that the *cannabis sativa* found in possession of the Appellant was not for his own consumption. It well might have been. But I note that the Appellant never claimed that it was for his own consumption, though he was not asked. But on the other hand the prosecution never claimed that the *cannabis sativa* was for trade. I note however that even where the *cannabis sativa* is for own consumption the penalty can still be quite stiff. In that case a person is liable to imprisonment for 10 years. The Appellant got 6 years.

7. I am satisfied however that the sentence imposed upon the Appellant was unduly influenced by the negative Community Service Order report. The trial court ought simply to have declined to impose a community service order. The severity of the custodial sentence imposed ought not to have been influenced by the negative report as it clearly did here.

8. I will in the event partially allow the appeal. I will set aside the sentence of 6 years imprisonment imposed by the trial court and substitute therefor a sentence of **3 years imprisonment**. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 11TH DAY OF MARCH 2015

H.P.G.WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 13TH DAY OF MARCH 2015