



**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 30 OF 2014**

**(Appeal from conviction and sentence in Murang'a CM Criminal Case No 291 of 2013 – T. Nzyoki,  
Ag. SPM)**

JOHN IRUNGU MWANGI..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

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

1. The Appellant *John Irungu Mwangi* was charged with **being in possession of cannabis** contrary to **section 3(1) & (2) (a)** of the **Narcotic Drugs and Psychotropic Substances (Control) Act, No 4 of 1994**. The particulars of offence alleged that on 22<sup>nd</sup> May 2013 at **Gituto Village, Wanjengi Sub-location** in **Kahuro District** of **Murang'a County**, he was **found being in possession of 85 sachets of cannabis which was not in medicinal preparation**. He was convicted as charged after trial and sentenced on 20/03/2014 to serve four (4) years imprisonment. He has appealed against both conviction and sentence. Various grounds of appeal were advanced.

2. I have read through the record of the trial court, including the judgment dated and delivered on 10/03/2014. There was no evidence that the Appellant was found in actual possession of the substance described in the charge as **cannabis** and as **bhang** by the witnesses. The evidence placed before the trial court was that the substance was recovered outside his house (but within the compound) at night while the Appellant and his family were eating supper inside the house. The house was barely 10 meters from a public road. He was not present at the time and actual place of the alleged recovery.

3. It appears in the judgment, though not expressly stated, that the trial court relied upon the doctrine of **constructive possession**. However, there was no evidence that the Appellant had exclusive possession and access to the compound. The possibility that someone else could have placed the substance there could not be excluded.

4. There was also no basis laid for not calling the maker of the Government Analyst's report to produce it in court; no application was made under **section 67** of the **Evidence Act, Cap 80**. The report was a vital piece of evidence in the prosecution case and ought to have been properly introduced in evidence.

5. The conviction of the Appellant is clearly unsafe, and learned Prosecution Counsel properly does not support it. I will allow the appeal in its entirety. The Appellant's conviction is hereby quashed and the sentence imposed upon him set aside. He shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 11<sup>TH</sup> DAY OF JUNE 2015**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 12<sup>TH</sup> DAY OF JUNE 2015**