

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL APPEAL NO.153 OF 2014

BEN ZADOCK NANDWA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the conviction and sentence of the Hon. E. Michieka

(Ag.Principal Magistrate) in KiKuyuChief Magistrate’s Criminal Case No.784 of 2014 delivered on 06th October, 2014)

JUDGEMENT

Ben ZadockNandwa, the appellant herein was charged with the offence of being in possession of bhang contrary to Section 3(1) and 2 (a) of the Psychotropic Substances Control Act, Cap 245, Laws of Kenya. Particulars of the offence were that on the 20th day of August 2014 at Kerwa within Kiambu County was found being in possession of bhang to wit 8 rolls and one stone of bhang which was not in medicinal form with a street value of Ksh.2,160/.

The appellant was convicted on his own plea of guilty. He was fined Kshs. 100,000/ in default of which to serve three months imprisonment. He was dissatisfied with the sentence, hence this appeal. He told the court that he was suffering from syphilis and although he had been treated in prison he had not improved. He pleaded with the court to release him because he has two children he takes care of single handedly as he was separated with his wife who has since remarried. He stated that the children required his care since they were young, being aged 9 and 12 years respectively.

Learned state counsel Miss Nyauncho did not oppose the appeal. She submitted that the sentence imposed was illegal since where the trial court imposes a fine with a default sentence,the default sentence ought to be guided by Section 28 of the Penal Code.Submitted that, the appellant having been fined Ksh.100,000/, the maximum default sentence ought to be 12 months.Hence the sentence ought not to have exceeded 12 months.

Sentencing is always in the discretion of the trial magistrate. This court will therefore not interfere with the said discretion unless it is established either that the sentence was too harsh or lenient in the circumstances. The court will also interfere with the sentence imposed if it is established that the trial magistrate applied the wrong principles of the law in sentencing.

In the present appeal, the sentence imposed was legal. However taking into account that the appellant was a first offender and that the quantity of the bhang point to the fact that he may have kept it for personal consumption, it is my view that the fine imposed was excessive. He is remorseful. He has since his imprisonment served ten months. I think he has served sufficient punishment. I also note that the state did not oppose this court exercising its discretion in sentencing.

Accordingly, the appeal is allowed. I set aside the fine imposed. I order that the sentence be commuted to the period already served. The appellant is ordered set free unless lawfully held. It is so ordered.

DATED and DELIVERED this 28th July, 2015

G.W. NGENYE- MACHARIA

JUDGE

In the presence of:-

1. Appellant in person.
2. Miss Ngetich for the respondent.