



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 27 OF 2012

ALBERT WAHOME WAIGANJO.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

(An appeal from the original conviction and sentence of F.M. Kombo. PM in Mukurweini PM'S Criminal Case No. 348 of 2011 delivered on 8th February, 2012)

JUDGMENT

1. The appellant, herein Albert Wahome Waiganjo was on 30.6.2011 charged with the offence of cultivation of prohibited plant contrary to section 6(a) of the Narcotic drugs and Psychotropic Substances Control Act No. 4 of 1994. The particulars were that on 29th June, 2011 at Gikondi Location in Nyeri County he was found having cultivated prohibited plants to wit 19 plants of cannabis.
2. The hearing of the case proceeded with the prosecution calling five witnesses. His father testified that on 28.6.2011 he went to his shamba at 8.00 am and saw some plants which had been cultivated and wondered what they were. He took a sample and asked a youthful person in the vicinity what the plant was. PW1 was told that it was bhang. He reported to the assistant chief who visited the farm the following day. PW1 then reported the issue to the OCS Mukurweini police station who wrote a letter addressed to the Assistant Chief which he delivered the next day. The Assistant chief went to PW1's farm with police officers who uprooted the plants.
3. It was PW1's evidence that the appellant, who is his son, is the one who used to cultivate the portion of land where the plants were growing and that he had previously chased him away for smoking bhang.
4. PW2 confirmed having received a report from PW1 on 28.6.2011 to the effect that there were some plants being grown in his shamba which he suspected to be bhang. He informed him that his son, the appellant, used to cultivate the shamba. PW1 took to him a letter from Mukurweini Police Station requesting that the appellant be arrested. They went to the appellant's house, took him where the plants were growing but he denied having grown them. They uprooted the plants and escorted the appellant to Mukurweini Police Station.
5. PW3 and PW4 both of whom are Administration police officers visited the homestead of PW1 after he reported that the appellant had cultivated bhang. They uprooted 19 plants from the farm and escorted the appellant to Mukurweini police station. They also handed in the exhibits in the said police station.

6. PW5 received a report from PW1 on 28.6.2011 about the plants that the appellant was growing on PW1's land on 29.6.2011. He and others proceeded to the farm and uprooted the plants. He prepared an exhibit memo and sent the plants to the Government chemist who confirmed that the plants were cannabis.
7. In his defence, the appellant denied having committed the offence.
8. The learned trial magistrate evaluated the evidence and found it to be consistent and cogent and unshaken in cross examination. He convicted the appellant and sentenced him to serve 7 years imprisonment. The court noted that he was a first offender.
9. The appellant filed his grounds of appeal on 16th February, 2012. At the time of hearing this appeal, he abandoned the appeal against conviction and indicated that he wished to appeal against the sentence of 7 years imprisonment.
10. This court notes that the sentence provided for under section 6(a) of the Narcotic drugs and psychotropic substances (control) Act is a fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.
11. The appellant's action of withdrawing the appeal against conviction shows that he has belatedly come to terms and accepted that he went against the law by cultivating cannabis on PW1's land. This is indicative of the fact that the appellant is remorseful.
12. In the circumstances, I reduce the sentence imposed against him to the period he has already served. The appellant will therefore be set at liberty unless otherwise lawfully held.

DATED and SIGNED at KAKAMEGA on this 14th day of October 2015

NJOKI MWANGI

JUDGE

DELIVERED, DATED and SIGNED in NYERI on this 26th day of October 2015

J. MATIVO

JUDGE

In the presence of:-

.....Appellant

.....Respondent

.....Court Assistant