



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO.104 OF 2012**

**PETER KAMAU MUTHONI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(Being an appeal against the Judgment of E. Boke, Principal Magistrate, Naivasha in Criminal Case No.3042 of 2011)**

**JUDGMENT**

PETER KAMAU MUTHONI was convicted on a charge of being in possession of Narcotic Drugs contrary to **Section 3(1)** as read with **Section 3(2) (a)** of **Narcotic and Psychotropic Substances Control Act No.4 of 1994**. He was sentenced to 4 years imprisonment. The particulars of the charge were that on 7<sup>th</sup> day of October 2011, at Ndungu Njeru Trading Centre, the appellant drew the suspicion of police officers who were on patrol with a green paper which he was carrying, while behaving in a suspicious manner.

The officers stopped him and upon checking, found that he had 2 stones, 56 rolls and 200gms of bhang. He was arrested and the recovered bhang was produced as exhibit.

The appellant confirmed to the trial magistrate that the facts were correct and in mitigation he sought forgiveness saying he had two young children whose mother had run away, and he is an orphan.

The trial magistrate called for a pre-sentence report which upon presentation to the court indicated that the appellant was not suitable for a non-custodial sentence and he was not a first offender, ultimately, he was sentenced to 4 years imprisonment.

The appeal is only on sentence where the appellant pleaded for a reduction of his prison term, saying he is very remorseful and promises never to repeat the offence. He claims that prior to his arrest he was a law abiding citizen and his present woes result from bad company and **“intoxicant influence.”**

The appeal is opposed, and Miss Karoki submits on behalf of the State that although the appellant is remorseful, the trial magistrate had considered his past record and even called for a social inquiry report which indicated that he was not suitable for a non-custodial sentence.

I have taken into account the quantity of the substance recovered from the appellant as well as its street value. The trial magistrate had taken into account the circumstances of the offence when she called for a social inquiry report. I have perused that report which did not speak well of the appellant – he is a repeat offender and it was established that he was infact a drug peddler.

The trial magistrate had duly considered the sentencing option available and in my view she properly exercised judicial discretion in meting the sentence. I find no reason to interfere with the sentence. Consequently I confirm the sentence, and the appeal is dismissed.

**Delivered and dated this 29th day of January, 2013 at Nakuru.**

**H.A. OMONDI**

**JUDGE**