



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 235 OF 2011

KAZUNGU KITSAO THOYA..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 447 of 2011 of the Chief Magistrate's Court at Mombasa – Hon. Gandani- SPM)

JUDGMENT

The Appellant **KAZUNGU KITSAO THOYA** was charged Convicted and Sentenced to seventeen (17) years imprisonment for the offence of trafficking Narcotic drugs contrary to Section 4(a) of the Narcotic drugs and Psychotropic substances control Act.

The particulars are that :-

“On the 5th day of February, 2011 at Mariakani area of Kaloleni Kilifi County he trafficked in Narcotics drugs by storing 49 kilogrammes of Cannabis Sativa with a market value of Ksh. 98,000/= in contravention of the said act”.

The brief facts of this case are that police acting on information received preceded to the Appellants house at Mariakani on 5th February, 2011 at around 10:00 a.m. These were **PC ABUDULAHI WAKO** and **PC SIGILAI** of Nyali police station. Upon finding the Appellant outside his house they introduced themselves to him and proceeded to search the house which he confirmed to be his. They recovered in one of the three rooms of the house sacks containing dry plant material which they suspected to be bhang arrested the Accused and took him to Nyali police station. The Bhang was weighed in his presence and samples were taken to government chemist for analysis. The bhang was found to weigh 49 kilogrammes and was valued at Ksh. 98,000/-.

The grounds of appeal are that the charge was defective.

That the Conviction was against the weight of evidence adduced and that the Sentence was harsh.

A perusal of the charge sheet shows that he was charged with trafficking by way of storing.

“Storing” is one of the constituents of trafficking hence the charge is not defective.

The Appellant was found outside his house. He took the officers inside the said house where they

found several sacks containing a dry plant material which was later confirmed to be Bhang. (Cannabis Sativa).

On the issue of Sentence. The appellant was fined Ksh. 294, 000/= being 3 times the value of the Bhang and to serve two (2) years imprisonment in default.

He was further Sentenced to fifteen (15) years imprisonment. Sentences were ordered to run consecutively.

The trial magistrate did note that the Act carries very stiff Sentences. That is correct. She also noted the rampant misuse of drugs in the Coast region.

Which is also a factor to be borne in mind while Sentencing.

I find no good grounds to interfere in both the Conviction and the Sentence. The Sentence was legal and proper.

The appeal has no merit and its disallowed.

Judgment delivered dated and signed this **31st** day of **March, 2014**.

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M. MUYA

JUDGE

31ST MARCH, 2014

In the presence of:-

State Counsel Miss Mwaura

The Appellant present

Court clerk Musundi