



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL APPEAL NO.186 OF 2010**

**SILVANO NJUE GATANGA..... APPELLANT**

**VERSUS**

**REPUBLIC ..... PROSECUTOR**

**From original conviction and sentence in Criminal Case No. 417 OF 2010 at the Principal Magistrate's Court at Siakago by Hon. S.M MOKUA – PM on 23/11/2010**

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

**SILVANO NJUE GATANGA** the Appellant herein was charged with the following offences;

**COUNT 1**

Possession of cannabis (bhang) contrary to section 3(1) as read with section 2(1) of the Narcotic Drugs and Psychotropic Substances Control Act

of 1994.

The particulars as stated in the charge were as follows;

**SILVANO NJUE GATAGA:** On the 24<sup>th</sup> day of May 2010 at 5.00pm at Gachoka village within Mbeere District within Eastern Province was found in possession of 5gms of cannabis (bhang) which was not medically prepared.

**COUNT 2**

Cultivating prohibited plants (bhang) contrary to section 6 sub section (A) of the Narcotic Drug and Psychotropic Substances Control Act No. 4 of 2004.

The particulars as stated in the charge were as follows;

**SILVANO NJUE GATAGA:** On the 24<sup>th</sup> day of May 2010 at Gachoka village within Mbeere District within Eastern Province was found cultivating prohibited plant (bhang) to wit 200 plants in a shamba.

He was convicted on his plea of Guilty after facts had been read to him on 21/7/2010. When he was brought back to Court for sentence on 23/7/2010 the Court referred him to a psychiatrist. He was confined at Mathere Mental Hospital for a few months. He was eventually sentenced as follows;

COUNT 1 - two (2) years imprisonment

COUNT 2 - seven (7) years imprisonment.

The order was that the sentences run concurrently. In the lower Court record is a probation officer's report dated 13/8/2010. This is what the Court stated while sentencing the Appellant at page 12 lines 9 - 11;

***“I have looked at the psychiatric report and the report from Mathare Mental Hospital and bearing in mind of what the accused is charged with herein, I don't consider the accused to be fit for probation”.***

This Court has had a chance to look at the two reports mentioned by the learned trial Magistrate. Contrary to his finding the Appellant needed a comprehensive rehabilitation plan to assist him. Sending him to prison was not the best option. The Appellant has abandoned his appeal on conviction. The record shows he was properly convicted and I uphold the conviction. He has already served the two years in count 1. I therefore set aside the sentence in count two (2). I substitute it with a sentence of three (3) years on probation. The incharge G.K. Prison Embu is hereby directed to liaise with the County Probation Officer to facilitate the Appellant's removal from prison to Mbeere Probation office for directions. Conditions clearly explained to Appellant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 5<sup>TH</sup> DAY OF SEPTEMBER 2013.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of;**

**M/s Ingahizu for State**

**Appellant – PIP**

**Mutero/Kirong – C/c**