



COPY

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 215 OF 2011

ISACK MAMBOAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No 379 of 2008 of the Senior Resident Magistrate's Court at Wundanyi **Hon. F. Munyi - RM**)

JUDGMENT

The Appellant **ISACK MAMBO** was Convicted and Sentenced to seven years imprisonment for the offence of being in possession of Cannabis Sativa contrary to section 3(1) as read with section 3(2) of the Narcotics drugs Act No. 4 of 1994.

The particulars are that on the 2nd day of October 2008 at Mwatunge Village, Mwatate, Taita Taveta County, he was found in possession of 16 stones of Cannabis Sativa of the value of Ksh. 8,000/= which was not in the form of medicinal preparation.

Administration police officers Senior Sergeant Nicholas Musambi (PW1), APC Fumo Hiribae (PW2), and another proceeded to the house of the Accused on the 2nd October, 2008 upon receiving information that he had Bhang in house.

Upon interrogation they proceeded to search the house and under a bed recovered two plastic Marlboro Cigarette paper bags. Upon opening inside they recovered 16 stones of Cannabis Sativa wrapped in Newspapers.

PW 3 PC Tony Akungu prepared an exhibit Memo form and took a sample of Bhang to a Government analyst. He later received a report indicating that the dry plant material was Cannabis Sativa.

In his defence the Appellant denied the charge insisting that it is police who told him that a man by the name Survivor taken Bhang to his house. He denied. Upon search they recovered Bhang in his bedroom. They passed at the home of survivor but they did not find him. They proceeded to police station but before they reached "**Survivor**" appeared and admitted that the Bhang was his but they did not want to hear of this.

The so called “**Survivor**“ was not called by the defence to testify.

There is no dispute that the 16 rolls of stones of Bhang were found in the house of the Accused to be exact under his bed. The time was very early in the morning at 6:30 am.

The Appellant was found in his house. If the Bhang was taken there by the so called “**Survivor**” then he should have been aware of its presence in his house. He must be taken to have exercised custody and control over it. Either the so called “**Survivor**” is a creation of the defence or in the alternative he was an accomplice.

When the investigating officer was producing the Government analyst report the Accused was asked whether he had any objection to its production to which he did state that he had no objection.

I am satisfied that the Conviction was proper and safe. The Sentence of Seven years Imprisonment is found to be reasonable.

There is no good reason found to disturb the Conviction and Sentence. Appeal rejected and dismissed.

Judgment dated, delivered in open Court this **5th** day of **September, 2013**.

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M. MUYA

JUDGE

5TH SEPTEMBER, 2013

In the presence of:-

Learned State Counsel Miss Ogweno

Appellant present

Court clerk Musundi