



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 304 OF 2010**

**KITSAO ALI KADENGE .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From the Original Conviction and Sentence in the Criminal Case No. 880 of 2010 of the Chief Magistrate's Court at Mombasa – Hon. R. Kirui - PM)**

**JUDGMENT**

The Appellant in this case was Convicted and Sentenced to ten (10) years imprisonment in addition to a fine of Ksh. 1 million in default two years imprisonment for the offence of trafficking in Narcotic drugs contrary to section 4(a) of the Narcotic Drug Act No. 4 of 1994.

The particulars are that on the 13th day of March, 2010 at Majaoni area of Bamburi Location Mombasa county he was found trafficking in Narcotic drugs to wit 84 rolls of Cannabis Sativa with a street value of Ksh. 930/= in contravention of the said Act.

Police constables Edward Simiyu and Francis Muturi Mbogo (PW 1 and PW 2 respectively) acting on information received proceeded to a house at Majaoni – Bamburi where they found the Appellant at a Veranda rolling Cannabis Sativa. They recovered 84 rolls of Cannabis Sativa.

The Accused in this case is charged with trafficking in Narcotic drugs. It is not shown in which manner he was trafficking the drugs in question, was he distributing, conveying and or transporting them.

The charge sheet is silent on the aspect of the manner of trafficking. The police witnesses also did not inform the Court where they found the 84 rolls of Cannabis Sativa. They did not indicate whether the rolls of Cannabis Sativa were found on the person of the Accused. Whether they were on the ground under a table, in the pockets or hidden under some bush.

Punishment in drug trafficking is predicated upon the value of the drugs. There was no evidence adduced at all as to the value of the drugs in question.

I find the Conviction of the Accused to be unsafe. His appeal succeeds, the Conviction is quashed and Sentence set aside. He is set at liberty unless otherwise lawfully held.

Judgment dated and delivered this **3rd** day of **September, 2013**.

.....

**M. MUYA**

**JUDGE**

**3RD SEPTEMBER, 2013**

**In the presence of:-**

Learned State Counsel Miss Ogweno

The Appellant present

Court clerk Musundi