



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 227 OF 2010**

**JESSE MURIITHI KABATHI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, Jesse Muriithi Kibathi was charged with the offence of being in possession of cannabis sativa (bhang) contrary to **Section 3(1)** as read with **Section 3(2)** of the **Narcotic Drugs and Psychotropic Substances Act No. 4 of 1994**. The appellant was found in possession of 184 rolls worth Kshs.3,680/-. He pleaded guilty to the charge; he was convicted and was sentenced to 20 years imprisonment in accordance with **Section 3(2)** of the **Act**. He has appealed against the sentence which he claims is too harsh, that he was a first offender, the sole bread winner, is remorseful and has reformed during the period he has been in prison.

The learned State Counsel had no objection to the appeal contending that the sentence was too harsh.

The appellant was found in possession of 184 rolls of bhang. The appellant admitted that he sells the bhang to earn a living meaning that it was not for his own consumption but for commercial purposes. **Section 3(2)** of the **Act** provides for the minimum sentence of 20 years, but I believe that the court had to look at the special circumstances of each case. In this case, the value of the drugs is not high. The appellant pleaded guilty and did not waste the court's time. He was said to be a first offender. Taking into account all the above facts. The court finds the sentence to be excessive in the circumstances, will set aside the sentence and quash it. The appellant has been in prison since 15/7/2010, over three years now. Instead of the custodial sentence, the court will take into account the period served and will ask for Probation Officer's report to consider whether the appellant can benefit from probation. It is directed that a Probation Officer's report be filed within two weeks hereof for the court's consideration.

**DATED and DELIVERED this 16<sup>th</sup> day of October, 2013.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

**The appellant in person – present**

**Mr. Chirchir for the State**

**Kennedy – Court Assistant**