



REPUBLIC OF KENYA
IN THE HIGHCOURT OF KENYA

AT NAKURU

HCRA NO 19 Of 2012

EVANS GATERI MWANGIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from original conviction and sentence in Nakuru C.M Criminal case no.160 of 2012 by **Hon W Juma C.M** dated 27th January 2012)

JUDGEMENT

1. The appellant was charged with the offence of being in possession of cannabis sativa contrary to section 3(1) and (2) of the Narcotics Drugs and Psychotropic substances control Act 1994(No.4 of 1994).
2. He pleaded guilty to the offence and was convicted. The appellant admitted to these facts and in mitigation sought forgiveness saying he will not repeat the offence.
3. He was sentenced to ten years imprisonment.
4. The appellant being dissatisfied with the decision on sentencing of Hon W Juma Chief Magistrate, Nakuru preferred this appeal and listed the following grounds of leniency in his petition of appeal.

GROUND OF APPEAL

- 5(i) That the appellant is a first offender and very remorseful.
- (ii) That the appellant will never repeat the offence again, has learnt the hard way.
- (iii) That before arrest he was a peace loving and a law abiding citizen and was influenced by peer pressure and bad company which he will cease from keeping.
- (iv) That before his arrest he was the only bread winner for his siblings who became orphaned during the post-election violence of 2007-2008.
- (v) That the ten years imprisonment term be substituted with a non-custodial sentence to enable him reconstitute his future as he is still young with potential.

THE LAW

6. The Narcotic Drugs and Psychotropic substance

Act, 1994, is drawn in such a manner that apart from expressly provided exceptions where possession of a narcotic drug or Psychotropic substance is permitted under section (3) of the Act, it is an offence for any unauthorized person to possess a narcotic Drug or Psychotropic substance. The language of the Act admits only strict construction of it.

“Any person who has in his possession of any narcotic Drug or psychotropic substance shall be guilty of an offence section 3(i).

Section 3(2) (c) says:

(2) **“A person guilty of an offence under subsection (1) shall be liable -**

(a) In respect of cannabis where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years, and in, every other case to imprisonment for twenty years....”

ANALYSIS

7. Under section 348 of the Criminal Procedure Code, a person who pleads guilty is convicted and sentenced on his own plea of guilty, can only appeal on

grounds of either legality or extent of sentence. The appellant does appear to be aware of this because he has pleaded for reduction of his prison term.

8. The appeal is not opposed.

9. Mr Chirchir submitted on behalf of the state that the appellant was found in possession of two rolls of bhang. The value of the drug was not for commercial but for consumption and the Magistrate should have considered this. The appellant was also remorseful during mitigation and indicated that he was a first offender who would not repeat the offence again. He is a young man who should be given a chance.

10. I have considered the grounds of appeal, state counsels submissions and taken into consideration the quantity of the substance recovered from the appellant as well as the street value.

11. Sentencing is essentially at the discretion of the trial court. An appellant court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor, it applied a wrong principle or that the sentence is harsh and excessive, that an error in principle must be inferred. see(**Charo Ngumbao Gugudu V Republic** (2011) eKLR. The court also held that a maximum sentence should only be meted out to the worst offender under the particular section that the offender is charged.

12. The appellant was a first offender and was found in possession of two rolls of bhang worth Kshs. 20/=. He pleaded guilty before the trial commenced and he therefore did not waste court's time.

FINDINGS

13. In my humble view, the learned Magistrate did not take into account the above relevant facts because had she done so, then she would have meted a more lenient sentence other than the maximum 10 years imprisonment. I find that the sentence of 10 years was excessive in the circumstances and it was not commensurate to the offence.

CONCLUSION

The appeal against the sentence is hereby allowed. The sentence of 10 years imprisonment imposed by the trial court is set aside and this court exercises its discretion and sentences the appellant to the term already served. It is so ordered.

Dated, signed and delivered at Nakuru this 8th day of November 2013

L N WAITHAKA

JUDGE

PRESENT

Evans Gateri Mwangi- Appellant

Mr Marete for the state

Emmanuel Maelo: Court Clerk

L N WAITHAKA

JUDGE