

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL 218 OF 2012

(Appeal against conviction and sentence from the original Criminal Case No.766 of 2012 in the Principal Magistrate's Court Mumias)

ALLAN OCHIENG OWINO APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged with the offence of being in possession of narcotic drugs contrary to **section 3(1)** of the Narcotic Drugs and Psychotropic Substance Act No.4 of 1994 as read with subsection 2 Para (A) of the same Act. The particulars of the offence were that the appellant *on the 26th day of August 2012 at about 9 p.m., along Mayoni-Shibale road, Mayoni sub-location, Matungu location in Matungu district within Kakamega County, while riding motorcycle TVS Star, Registration No. KMCR 525 R, red in colour, was found in possession of cannabis sativa (bhang) to wit 22 Kgs in contravention of the said Act being of street value of KShs.20,000/=.*

The appellant pleaded guilty to the offence and was sentenced to serve 10 years imprisonment. The grounds of appeal are that the sentence is excessive, that he was not warned of the consequences of pleading guilty and the gravity of the offence and that he did not understand the court process as he was misled by the police. During the hearing of the appeal the appellant informed the court that he pleads for leniency as he had taken over the motorcycle that had the drugs from another cyclist. Mr. Oroni, State Counsel, opposed the appeal and relied on the facts supplied by the prosecutor.

The record of the trial court shows that the charge was read over to the appellant in Kiswahili and the appellant pleaded guilty. The facts were also read to him and he also pleaded guilty. In mitigation the appellant asked the court to be lenient with him. The facts of the case were that on the 26.8.2012 at about 9.00 p.m. the police at Booker police patrol base got a tip of that the appellant was carrying narcotic drugs on a motorcycle along the Busia-Mayoni area. Police laid ambush and arrested the appellant. The drugs were sent to the Government Chemist and found to be cannabis sativa (bhang) with a street value of KShs.20,000/=. Taking into account the fact that the appellant pleaded guilty and the value of the drugs, I do find that 10 year imprisonment is an excessive sentence. The appellant has served over 1 year in prison and that is enough punishment. The appeal on conviction lacks merit and is disallowed. The sentence is hereby set aside and replaced with the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 14th day of November 2013

SAID J. CHITEMBWE

J U D G E