No.299
REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO. 275 OF 2010

BETWEEN

ERICK NYACHAE CHABANI ……..…..……..
APPELLANT
VERSUS
REPUBLIC ……..……..…… RESPONDENT
(Appeal arising from the original conviction and sentence in Keroka SRM's Criminal Case No. 1366 of 2010 by A.P. Ndege, RM on 12/11/2009)

JUDGMENT

1. The appellant herein, Erick Nyachae Chabani was jointly charged with one Evan Samuel Nyanchoka before the Keroka Senor Resident Magistrate's court on two counts under the**Narcotic Drugs Psychotropic Substances Control Act No.4 of 1994 (the Act).** In count one they were charged of cultivating narcotic drugs contrary to**section 3 (2) (A) of the Act**. It was alleged that they cultivated eight(8) plants of cannabis sativa jointly with others not before court on the 27th day of October 2009 at about 6.00 a.m.at Mwongori village in Borabu District within Nyanza Province.

2. In count 2, they were charged with being in possession of narcotic drugs contrary to **section 3 (2) (A)** of the **Act,**It being alleged that on the 27th day of October 2009 at about 6.00 a.m. at Mwongori village in Borabu District within Nyanza Province the appellant and his co-accused were each found in possession of cannabis sativa (bhang) to wit 5 grammes and 10 grammes respectively. The appellant and his co-accused pleaded guilty to both counts and were accordingly convicted on their own plea. They were each fined Kshs.18,000/= i/d to serve 5 years imprisonment and Kshs.5000/= i/d to serve 5 years imprisonment on counts I and II respectively. Both sentences were to run consecutively.

3. The appellant was aggrieved by both conviction and sentence and has appealed to this court for redress. In his home-made Petition of Appeal, the appellant complains that the sentence imposed upon him by the trial court was excessive in the circumstances of the case. The appellant also complains in a thinly veiled way that the conviction was illegal.

4. Before I proceed to consider the merits of this appeal, it is important to consider the facts of the case. It was stated that on the material day and at the material time, the appellant and his co-accused were arrested after they had threatened their employer that they would steal his cattle and destroy his tomato plantation. They were escorted to Chebilat police post for interrogation. On being searched they were found to be in possession of bhang as stated in the charge sheet. They were escorted to the employer's farm where the eight (8) plants of bhang were found. It was established that the appellant and his co-accused had planted the bhang and were cultivating it. They were then charged with the two counts.

5. At the hearing of the appeal, the appellant abandoned his appeal on conviction and asked the court to reduce the sentence so that he could go back home and look after his children.

6. The appeal on sentence was opposed. The respondent's counsel submitted that the trial court had no option but to mete out the sentence in accordance with the law after the appellant pleaded guilty to each of the two counts.

7. This is a first appeal. As the first appellate court, this court is under a duty to reconsider and evaluate the evidence afresh with the view of reaching its own conclusions in the matter. See generally **Okeno – vs- Republic [1972] EA 32** and **Pandya –vs- R [1957] EA 336**. I have carefully done so and the issue that arises in this case is only one of sentence and that is whether this court should interfere with the sentence meted out to the appellant by the trial court.

8. The principles to be applied by this court in deciding whether or not to interfere with the sentence imposed by a trial court were set out in the case of **Diego –vs- Republic [1985] KLR 621**. It was held therein that an appellate court should not interfere with the discretion by a trial judge as to sentence except in such cases where it appears that in assessing the sentence, the judge acted on some wrong principle or has imposed a sentence which is manifestly inadequate or manifestly excessive.

9. Applying the above principles to the instant case, I do not find any justification for interfering with the sentence meted out by the trial court upon the appellant. The sentence was neither illegal nor excessive in the circumstances.

10. The upshot of what I have said above is that the appeal herein lacks merit. The same is accordingly dismissed.

11. It is so ordered.

Dated and delivered at Kisii this 20th day of January, 2012

RUTH NEKOYE SITATI
JUDGE.
In the presence of:
present in person for Appellant
Mr. Gitonga (present) for Respondent
Mr. Bibu - Court Clerk

RUTH NEKOYE SITATI
JUDGE.