



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CRIMINAL APPEAL 210 OF 2010
JARED MASGHA MWALIKUMBI.....APPELLANT
-VERSUS-
REPUBLIC.....RESPONDENT

*(From the Original Conviction and Sentence in Criminal Case No.100 of 2010 of the
Resident Magistrate's Court Voi – L. Nyakundi)*

JUDGEMENT

Jared Msagh Mwakikumbi was charged with the offence of

“Being in possession of narcotic drugs Contrary to Section 3(1) as read with Section 3(2) (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994”.

The particulars therefore states that:-

“On the 26th day of January 2010 at Mwakinglai within Voi District of the Coast Province was found in possession of narcotic drugs namely 21 rolls of cannabis with a street value of Kshs. 210/-

He pleaded guilty to the charges, was convicted accordingly and sentenced to serve FOUR years imprisonment. He lodged an appeal on sentence, vide the petition of appeal as follows:-

- 1. That he is not a habitual offender and therefore prays the court to consider altering the sentence imposed.**
- 2. That he is the only guardian caring for his three children who are in school.**
- 3. That he prays for a non-custodial sentence that would enable him to rehabilitate well and also administer to his family**
- 4. That he is very remorseful and pledged not to recommit such an offence**
- 5. That he is willing to abide by any regulation that the court deems fit and forgive him.**

Subsequently he filed a Notice of Motion to amend the **“mitigation grounds of appeal”** and annexed thereto the amended grounds of appeal. A look at the amended grounds of appeal indicates that, he was appealing against both conviction and sentence. However, at the hearing of the appeal, he abandoned the

appeal against conviction and proceeded against the sentence alone. He relied on the written submissions he filed in support of the appeal.

In a nutshell he told the court that although he has a record of being a habitual peddler of narcotic drugs, it's because, he has no job to do to feed his family. That he is remorseful and has obtained training from prison which he will use for re-intergration into the society. That, he pleads for mercy, from the court and prays for non-deterrent sentence to obtain reform and rehabilitation.

The appeal was opposed by the Learned State Counsel Mr. Tanui appearing for the State. He submitted that, the sentence meted upon the Appellant was lenient, because he was sentenced to four (4) years imprisonment, yet, the law provides for ten (10) years imprisonment. That, the Probation Officer prepared a pre-sentence report on the Appellants which revealed that he was not a first offender, and that, even his wife too has been convicted for indulging in Narcotic drugs peddling business thus, the Court should not interfere with the sentence imposed herein.

I have considered the appeal in total, alongside both the written submissions by the appellant, and the oral submissions by the State Counsel. I find that, the appellant, pleaded guilty to the charges. The Probation Officers report presented before the sentence, revealed that the Appellant was sentenced to serve 4 years imprisonment and served at Manyani Prison for being in possession of bhang on the 28th December 2005 vide Criminal Case no. 930/05, at the Senior Resident Magistrate's Court at Voi. Thus despite a sentence of 4 years, he did not reform or even purposes to change. He is thus not sincere to allege that he is remorseful or even ready to change. Indeed the same report indicates that despite being in prison for selling bhang, the wife continued with the same illicit business. She too was sentenced to serve two (2) years on probation for being in possession of Narcotic Drugs vide Criminal Case no. 819/07. She was sentenced on 10th August, 2007. However, she was arrested after one week of completion of that sentence and charged again with a similar offence vide Criminal Case no. 701/09 at the Senior Resident Magistrate's Court at Voi and sentenced to serve one year imprisonment .

Therefore, there is a very high possibility that even if the appellant herein is sentenced to a non-custodial sentence, he will but only continue with the illicit trade. I find no merit in the appeal. I concur entirely with the submission made by Learned State Counsel. I, therefore, dismiss this appeal against sentence and uphold the sentence imposed herein.

Orders accordingly.

G. L. NZIOKA
JUDGE
27.3.2012

Dated, signed and delivered in an open court at Mombasa.

G.L. NZIOKA
JUDGE
27.3.2012

In the presence of:
Appellant in person
Mr. Tanui for the State
Morara – Court clerk.