



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**CRIMINAL APPEAL 61 OF 2011**

*(From original conviction and in criminal case no.760 of 2010 of the Chief Magistrate court at Malindi)*

**SAID ALI FADHIL.....APPELLANT**

**VS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The appellants appeal is primarily against the sentence which he complains is excessive for the offence of Possession of Narcotic drugs contrary to section 3 (2)(a) of the Narcotic Drugs and Psychotropic Substances Control Act to which he pleaded guilty.
2. He has attempted in his written submissions to place the blame for the drug elsewhere. This Court has looked at the proceedings in the lower court. There is no doubt that the plea taking was properly done and the appellant's plea of guilty was unequivocal. That is also the gist of his Amended grounds of appeal. However the plea court should endeavour to have the charges read afresh to an accused person where facts of the case of relevant exhibits are not tendered immediately upon the first admission of guilt by the accused. This will ensure that the accused person relates the facts to the charge read to him. In the instant case, the facts were of such a nature that the appellant could not have confused and no miscarriage of justice has resulted.
3. The sentence imposed on the appellant appears to have been influenced to some extent by the Probation report which found him unsuited for probation. Again the appellant ought to have been asked to comment on that report before sentence. Be that as it may, I think that in light of the quantity of the drug found with the appellant, a five year imprisonment sentence was excessive.
4. I do therefore set aside the sentence and substitute therefore a sentence of imprisonment for 3 (Three) years to run from the date of conviction.

**Delivered and signed at Malindi this 19<sup>th</sup> day of June, 2012 in the presence of Mr Naulikha – State, Appellant present,c/c-Evans.**

**C.W.MEOLI**  
**JUDGE**