



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Application 394 of 2010

MOSES KANJA KARIUKI1st APPLICANT

MICHAEL KAMAU KIMANI2nd APPLICANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case Number 487 of 2010 in the Resident Magistrate's Court at Gatundu – D. G. Karani (SRM) on 2nd July 2010)

JUGMENT

1. The appellants herein, **Moses Kanja Kariuki** and **Michael Kamau Kimani** were convicted for the offence of trafficking in Narcotic drugs (Bhang), contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994**. They were sentenced to serve four (4) years imprisonment by the Resident Magistrate, D. G. Karani at Gatundu. The sentence commenced on 2nd July 2010.
2. The two appellants filed appeal Nos. **392** and **394** of **2010** which were subsequently consolidated and proceeded under criminal appeal No. **394** of **2010**. On the date of hearing both appellants abandoned their appeals against conviction and offered mitigation against the sentence,
3. The 1st appellant, **Moses Kanja Kariuki** told the court that he was aged 22 years, had a thriving “boda boda” business before his conviction and had learned masonry while in prison.
4. The 2nd appellant, **Micheal Kimani Kamau** also aged 22 years and a “boda boda” operator, told the court that he had acquired skills in electrical work while in prison.
5. They both pleaded for the reduction of the sentence, of 4 years imprisonment imposed against them.
6. I have therefore perused the lower court record which indicates that both pleaded guilty to the offence and took responsibility for their actions. I have considered that the amount found in their possession, was only ten rolls of bhang with a street value of Kshs.100/=, and the fact that they have already served two years and five months, out of the four years sentence handed to them.

7. I have also considered that they were young people barely out of their teenage at the time of conviction, but were gainfully employed in the “boda boda” business. It is my humble opinion that the interest of justice will be better served by the exercise of my discretion in their favour.

Reasons wherefore, their respective appeals succeed. The respective convictions are quashed and the resultant sentences set aside. Each appellant is set at liberty forthwith unless otherwise lawfully held.

SIGNED DATED and **DELIVERED** in open court this *15th day of November 2012.*

L. A. ACHODE

JUDGE