

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL CASE NO. 18 OF 2008

ANTHONY PETER NDIRANGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal arising from the original conviction and sentence by R. A. A. Otieno Senior Resident Magistrate in the Nyeri Chief Magistrate's Criminal Case No.2892 of 2007 delivered on 11th January 2008 at Nyeri)

JUDGMENT

Anthony Peter Ndirangu, the appellant herein, was convicted on his own plea of guilty to the offence of trafficking in narcotic drugs contrary to *Section 4(a)* of the Narcotic Drugs and Psychotropic Substances Act (control) Act No. 4 of 1994. The particulars of the offence are that on 5th October 2007 at about 15.00 hrs at Kahuro area, Gathuthi Sub-location, in Nyeri district within Central Province, the Appellant was found trafficking in 5 (250gm) stones of cannabis by transportation valued at Ksh.3,000/= which was not in its medicinal preparation in contravention of the said Act. The Appellant was then sentenced to serve 10 years imprisonment and was also ordered to pay a fine of Ksh.100,000/=. Being aggrieved, the Appellant is before this Court seeking to overturn the order on sentence.

The Appellant has cried foul that the sentence tendered was harsh and excessive. Mr. Makura, learned Senior State Counsel, was of the view that the sentence was in fact lenient hence it should be rectified to include a fine of Ksh.1,000,000/= instead of Ksh.100,000/=. The facts outlined by the court prosecutor indicates that the Appellant was ambushed and confronted by the Police. Upon being searched, the Police found him with five stones of greenish material which was later confirmed by the government chemist to be cannabis sativa. In my view the facts outlined by the court prosecutor did not satisfactorily prove the offence of trafficking within the definition given in *Section 2* of the same Act. I have no doubt that the facts outlined by the Prosecutor proved the offence of possession of cannabis sativa contrary to *Section 3(1)* as read with *Section 3(2) (a)* of the Act. That is a minor and cognate offence to that of trafficking. This court has the power to substitute the conviction at this stage although the Appellant was not charged with that offence. I do hereby substitute the conviction for the offence of trafficking with that of possession as proposed herein above.

For the above reasons, I allow the appeal to the extent that I quash the conviction for the offence of trafficking in narcotic drugs, set aside the sentence of 10 years imprisonment and the fine of Ksh.100,000/= and substitute therefore a conviction for the offence of possession of cannabis contrary to *Section 3 (1)* as read with *Section 3(2) (a)* of the Act for which I sentence the Appellant to serve five (5) years imprisonment. The sentence is to run from the date of sentence i.e. on 11th January 2008.

Dated and delivered at Nyeri this 17th day of June 2011.

J. K. SERGON

JUDGE

In open court in the presence of the Appellant one Mr. Makura for State.