



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

[Coram: Azangalala, J]

CRIMINAL APPEAL NO. 9 'B' OF 2011

BETWEEN

ZERUYA KWALA NDANYI:.....APPELLANT

AND

REPUBLIC:.....RESPONDENT

[Being an appeal from the decision of Hon. A. Onginjo, Senior Principal Magistrate, dated 7th January, 2011 at Eldoret Chief Magistrate's Court Criminal Case Number 85 of 2011]

JUDGEMENT

Zeruya Kwala Ndanyi, the appellant herein, was charged with being in possession of a narcotic drug contrary to section 3(1) of the Narcotic Drugs and Psychotropic Substances Act No. 4 of 1994 as read with section 2 (A) of the same Act, before Eldoret Chief Magistrate in Criminal Case No. 85 of 2011. It was alleged in the charge particulars that on 6th January, 2011 at Kambimoto Village, Lumakanda Location in Lugari District within Western Province the appellant was found being in possession of narcotic drugs namely, bhang to wit 4 kilograms, with a street value of Kshs. 8,000/- which is meant for medicinal preparation.

The facts, as were narrated before the Learned Senior Principal Magistrate (**A. Onginjo**) and admitted by the appellant, were that on 6th January, 2011, at Kambimoto Village, Lumakanda Location, Lugari District, Police Officers were on routine foot patrol, when they met the appellant who was carrying a yellow paper bag. She did not expect to meet police officers and when she met them she acted suspiciously. The officers' suspicion was raised and they ordered her to stop. She started shaking. She was requested to say what she was carrying in the yellow polythene bag by **Cpl. Ahmed Osama** and **PC. Godfrey Chebonei**. Instead of saying what was in the bag she handed the same to the police officers. The officers checked and found it contained cannabis sativa. The same was produced before the Learned Senior Principal Magistrate. The appellant was arrested and, together with the bhang, escorted to Lumakanda Police Station. The bhang was weighed and found to be 4kgs with an approximate street value of Kshs. 6,000/-.

By the time of plea, the Government Chemists Report had not been received.

The appellant admitted those facts and the Learned Senior Principal Magistrate convicted her as charged.

In mitigation, the appellant stated that she used the drug as a herb for treating her sick child. The Learned Senior Principal Magistrate considered the appellant's mitigation and in sentencing her to 2 years imprisonment she stated:-

“Mitigation is not tenable. Accused is not a 1st offender has refused to reform even after being put on probation. The effect of drugs on Kenya youths is far reaching and has to be curbed at all costs.”

It is from the foregoing that the appellant comes to this court by way of appeal against sentence only. She has repeated that she was misled into believing that the drug would cure her child. She has added before me that she is a single parent of five (5) children who all depend on her. Those new circumstances were not stated to the Learned Senior Principal Magistrate when she sentenced the appellant to two (2) years imprisonment. I am satisfied that had the additional personal circumstances of the appellant been known to the Learned Senior Principal Magistrate, she would probably have meted out a less severe sentence than the one she imposed upon the appellant. I will in the circumstances interfere with the sentence. In my view the period of about six (6) months the appellant has been in custody has taught her a lesson as she appeared remorseful when she appeared before me. Accordingly, I allow her appeal against sentence and set aside the sentence of two (2) years. The same is substituted with a sentence of imprisonment for the period already served.

I order that the appeal be set at liberty forthwith unless she is otherwise lawfully held.

It is so ordered

**DATED AND DELIVERED AT ELDORET
THIS 8TH DAY OF DECEMBER, 2011**

**F. AZANGALALA
JUDGE**

**Read in the presence of:-
The appellant and Mr. Chirchir for the State.**

**F. AZANGALALA
JUDGE
8TH DECEMBER, 2011**