



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**CRIMINAL APPEAL 156 OF 2009**

SIMON MAINA KAGWAINI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**JUDGMENT**

Simon Maina Kagwaini, the appellant was charged with the offence of being in possession of Cannabis Sativa contrary to section 3(1)(2) of Narcotic Drugs and Psychotropic Substances Act 1994 (No. 4 of 1994). He pleaded guilty and in mitigation he said that he was an IDP, prayed for leniency, that he had children who depend on him. He was sentenced to serve 3 years in jail. He has appealed to this court on five grounds namely:

1. *That the exhibits concerned had not been taken to government analyst for examination and analysis to ascertain that it was indeed a narcotic drug.*
2. *The charges which he faced in the lower court were not explained to him contrary to the requirements of section 77(2) (b) of the Constitution.*
3. *He also raised the claim that the charges were not explained to him in a language that he understood contrary to the provisions of section 77 (2)(b) of the Constitution.*

When the appeal was heard before me on 25<sup>th</sup> January 2010 the appellant did not argue any of the grounds of appeal and instead told the court that :

***“I am sorry I made an error. I pray the court to have leniency on me. I am a poor man with three children their mother died in 2003 and is buried in Nandi”***

I have examined the proceedings before the lower court and I am satisfied that the substance of the charges and every element thereof were explained to the appellant in a language that he understood and on being asked he replied in Kiswahili “It is true”. So the claim of violation of his right under section 77 is therefore not well founded and the appeal is disallowed on that ground.

On the other grounds, and in view of the provisions of section 348 of the Criminal Procedure Code an appeal following a plea of guilty may only be entertained on the grounds of the extent or legality of the sentence. The appellant has not challenged either the extent or the legality of his sentence. The provisions of sections 3, (1) & (2) of the Narcotic Drugs and Psychotropic Substances (Control) Act provided for a sentence of ten (10) years, where the person accused satisfies the court that he awarded that the cannabis was solely intended for his own use, and otherwise to twenty (20) years imprisonment. With a sentence of three years the lower court was within the limits and the sentence was therefore lawful.

The appellant’s plea that he is remorseful of the offence and that he lost his wife and he is sole breadwinner for his three children, I would not reduce that sentence. I would therefore confirm the lower court's sentence and dismiss the appellant's appeal. There shall be orders accordingly.

**Dated, delivered and signed at Nakuru this 26<sup>th</sup> day of February 2010**

**M. J. ANYARA EMUKULE**

**JUDGE**