



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Criminal Appeal 128 of 2009

BENTA AKELLO ADERO APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with the offence of trafficking in narcotic drugs contrary to **section 4** of the **Narcotic Drugs and Psychotropic Substances (Control) Act**. The particulars of the offence were that on 4th June 2007 at Nyamaharaga Township in Kuria district the appellant trafficked in 140 rolls of cannabis with an estimated value of Kshs. 4,200/= . After a full trial the appellant was found guilty, convicted and sentenced to five years' imprisonment. She was also ordered to pay a fine of Kshs. 20,000/= in default to serve additional two years in prison.

Being aggrieved by the said sentence the appellant appealed against the same. She submitted that being a first offender who was remorseful the trial court ought to have given her a lighter sentence.

Mr. Mutai, Senior State Counsel, opposed the appeal. He submitted that the sentence meted out against the appellant was not excessive.

Although the learned trial magistrate cannot be faulted for having exercised his discretion in sentencing the appellant, I have taken into consideration the quantity and value of the drug that was being trafficked. I have also considered the fact that the appellant has been in prison for over two years. In the circumstances, I allow the appeal and reduce the sentence to the period already served. The appellant is set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT KISII THIS 14TH DAY OF MAY, 2010.

D. MUSINGA
JUDGE.
14/5/2010

Before D. Musinga, J.

Mobisa – cc

Mr. N. Mutuku for the state

Appellant present

COURT: Judgment delivered in open court on 14th day of May, 2010.

D. MUSINGA
JUDGE.