



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

Criminal Appeal 70 of 2009

(From Original Conviction and Sentence in Criminal Case No. 348 of 2009 of the Senior Resident Magistrate's Court at Voi: P.N. Ndwiga – S.R.M.)

RAPHAEL MBOLE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

RAPHAEL MBOLE, the Appellant herein has filed this appeal challenging his conviction and sentence by the learned Senior Resident Magistrate Voi Law Courts on a charge of **BEING IN POSSESSION OF NARCOTIC DRUGS CONTRARY TO SECTION 3(1) OF THE NARCOTICS AND PSYCHOTROPIC SUBSTANCES ACT**. **MR. ONSERIO** learned State Counsel appeared for the Respondent State conceded this appeal. I have perused the record of the proceedings from the lower court and I am inclined to agree with this decision. The Appellant pleaded guilty to the charge on 30th April 2009. On 4th May 2009 the facts were read out to the accused who maintained his plea of guilty. The trial magistrate proceeded to convict the Appellant as charged and after listening to his mitigation sentenced him to serve five (5) years imprisonment. However as pointed out by the learned State Counsel the report of the Government analyst proving that the plant material recovered on the Appellant was actually Cannabis Sativa a prohibited drug, was not produced in court. This is a fatal omission which renders the conviction null and void. On this ground alone I do allow this appeal. The Appellant's conviction is quashed and the pursuant five (5) year sentence is hereby set aside. The Appellant to be released forthwith unless he is otherwise lawfully held.

Dated and Delivered in Mombasa this 16th day of September 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Appellant in person

Mr. Onserio for State

M. ODERO

JUDGE

16.09.2010