



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL APPEAL NO. 59 OF 2010**

*(From original conviction and sentence in criminal case No. 222 of 2010 of the Principal Magistrate's Court at Nyahururu dated 29<sup>th</sup> January 2010 - C. K. Obara {R.M.})*

FRANCIS NJOROGE WANJIRU.....APPELLANT

**VERSUS**

REPUBLIC.....RESPONDENT

**JUDGMENT**

The Appellant was charged with the offence of being in possession of cannabis sativa contrary to section 3(1) & (2) of the Narcotic Drugs and Psychotropic Substances Control Act 1994 (No. 4 of 1994). He pleaded guilty to the offence and was convicted. When a probation report was called for, the Appellant was found to have been convicted of the offence of stealing contrary to Section 275 of the Penal Code, (*Cap. 63, Laws of Kenya*) and had been sentenced to 9 months probation. The Appellant admitted to these facts, but said in his mitigation that he was not a habitual drug smoker, but was being introduced to the habit by a friend who had once come in his house.

The trial court subsequently cancelled his probation sentence, as he had breached the probation order by committing another offence. He was sentenced to 3 years imprisonment.

Under Section 348 of the Criminal Procedure Code, a person who pleads guilty and is convicted and sentenced on his own plea of guilty, can only appeal on the grounds of either **legality** or **extent** of the sentence. The Appellant does appear to be aware of this, or may be his advisers in prison are aware of this provision, hence the Appellant has prayed in his grounds of appeal that -

- (1) Consolidation of the two sentences,
- (2) reduction of the duration of imprisonment,
- (3) consider a non-custodial sentence,
- (4) and/or acquittal on the basis of his repentance.

I do indeed sympathise with the Appellant, he is a young man. He says he is an orphan. He has given his life to God. He has younger siblings being orphans and of tender years. That may indeed be so. The Narcotic Drugs and Psychotropic Substances Act, 1994, is drawn in such a manner that apart from expressly provided exceptions where possession of a narcotic drug or psychotropic substances is

permitted under Section 3(3) of the Act, it is an offence for any unauthorized person to possess a narcotic drug or psychotropic substance. The language of the Act admits only strict construction of it ... **"Any person who has in his possession of any narcotic drug or psychotropic substance shall be guilty of an offence (S3(1))."**

**Section 3(2)(a)** says -

***(2) "A person guilty of an offence under subsection (1) shall be liable -***

***(a) in respect of cannabis where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years, and in, every other case to imprisonment for twenty years..."***

In this case the Appellant was found in possession of bhang of which he had smoked a quarter. He says that he is not a habitual drug user, but was being introduced to the habit by a friend who had left it at his home. This description fits exactly the circumstances envisaged under Section 3(2)(a) of the Act aforesaid - *(that the cannabis was intended for his own use or consumption - )*. The punishment for such offence is not 3 years which the Appellant received from the trial court. The language of Section 3(2)(a) is strict, it does not admit of any discretion on the part of the court. It is mandatory. The punishment is ten (10) years.

In exercise therefore of the discretion vested in this court by Section 354(3) (b) of the Criminal Procedure Code, I increase the sentence from 3 years to 10 years as by law provided.

There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 29<sup>th</sup> day of October 2010**

**M. J. ANYARA EMUKULE**  
**JUDGE**