REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 299 of 2007

JAMES KARANJA MUREITHI ..... APPELANT

VERSUS

REPUBLIC ..... RESPONDENT

(Appeal from original Conviction and Sentence in Senior Resident Magistrate's Court at Karatina in Criminal Case No. 592 of 2007 dated 16th October 2007 by Kimemia B. M. – R.M.)

J U D G M E N T

The appellant, James Karanja Mureithi, pleaded guilty to and was convicted for the offence of being in possession of cannabis sativa (Bhang) contrary to section 3(1) as reads with section 2(a) of the Narcotic drugs and Psychotropic substances control Act. The particulars of that charge were that "on the 8th day of July, 2007 at Karatina town in Nyeri District of the Central Province, the appellant was found in possession of bhang to wit forty three (43) rolls, which were not in medicinal preparation form." The facts given in support of the prosecution case were that:

"On 8th July 2007 at Karatina town, the accused was found by police officer's on patrol with a total of 43 rolls of bhang, that were not in medical preparation. The officers were on (sic) Tip-off that the accused sells bhang. The 43 rolls were recovered from accused and was sent to Government Chemist and the report was received by the investigating officer and it confirmed that the material was cannabis sativa. The 43 rolls-P Exhibit – 1. Accused was charged before court"

The appellant admitted all these facts and the learned trial magistrate (B. M. Kimemia – RM) having convicted him sentenced him to four years imprisonment. The appellant now comes to this court by way of appeal limited to sentence only. It is a plea of mercy on the basis that the sentence of four years imposed on him was harsh and excessive in all the circumstances.

As a first appellate court, this court has a right to interfere with a sentence passed by the trial court if it is satisfied that in imposing the sentence, the trial court erred by not taking into account relevant factors or took into account irrelevant factors with the consequence that it ended up imposing a manifestly harsh and excessive sentence. However there is a rider to all these. Sentencing is an exercise in discretion. Just, like every discretion however, it must be exercised judicially and not capriciously. The appellate court should thus be slow to interfere with the exercise of discretion by the trial court unless of course the trial court has exercised the same capriciously.

In support of his appeal on sentence, the appellant pointed out that the sentence imposed is harsh and excessive. That he had so far served one year and one month of the prison term imposed. On his part Mr. Orinda learned Senior Principal State Counsel opted to leave the whole matter to court.

I have no doubt that the sentence imposed is manifestly harsh and excessive. The appellant had no previous records. In other words he was a first offender. He also readily pleaded guilty to the charge and thereby saved the court valuable judicial time. Much as the amount of cannabis sativa involved was substantial, that alone did not call for the sentence that was eventually passed on the appellant. That

being my view of the matter. I would allow the appeal against sentence, set aside the sentence of four years and substitute therefore a sentence of the time so far served by the appellant. In other words I commute the appellant prison term to the term so far served with the consequence that the appellant shall forthwith be set free unless otherwise lawfully held.

Dated and delivered at Nyeri on this 29th day of January 2009

M. S. A. MAKHANDIA

JUDGE