REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 349 of 2007

MUTHUKIA MOSE ……..... APPELLANT

VERSUS

REPUBLIC ……. RESPONDENT

(Appeal from the original Judgment & Conviction in the Resident Magistrate's court at

Mukurweini in Criminal Case No. 727 of 2005 dated 27th March 2006 by M. W. Mutuku – RM)

J U D G M E N T

This appeal is limited to sentence only. The appellant's grounds of appeal are to this effect:-

"1. That I had pleaded guilty to the charge.

2. That the sentence is excessive in consideration (sic) to the charge charged (sic).

3. That the plead (sic) was not free plea of guilty but conditioning (sic) on the circumstances in (sic) the life style in remand.

4. That I have eight children at Githii Primary School the imprisonment must deprive them further school and feedings (sic).

5. That I am too remorseful to (sic) the offence.

The appellant was arraigned before the Senior Resident Magistrate's Court at Mukurweini on one count of being in possession of bhang, contrary to section 3(2) of the Narcotic Drugs and Psychotropic Substances Control Act. It was alleged that the appellant on 8th November 2005 at Kariari village in Nyeri District within Central Province, was found in possession of 12 stones of bhang which was not in form of medicinal preparation. The appellant pleaded guilty to the charge. He was accordingly convicted on his own plea of guilty and sentenced to 5 years imprisonment.

As already stated, the appellant was aggrieved by the sentence imposed as aforesaid, hence he lodged this appeal. At the hearing of the appeal, the appellant reiterated that the sentence imposed was harsh and excessive. On his part, Mr. Makura, learned Senior State Counsel submitted that the maximum sentence for the offence was 10 years imprisonment. It would therefore appear that the sentence imposed was excessive bearing in mind that the appellant was a first offender and had pleaded guilty to the charge.

Sentencing is a matter for the discretion of the trial court. The discretion must however, be exercised judicially. The trial court must be guided by evidence and sound legal principles. It must take into account all relevant factors and exclude all extraneous or irrelevant factors – See generally Republic v/s Balista Lisoni Beni C.A. No. 65 of 2004 (UR).

I quite agree with Mr. Makura that the sentence imposed would appear to be manifestly harsh and excessive considering that the appellant was a first offender and had pleaded guilty to the offence. The appellant was not a serial drug peddler to attract such harsh sentence. Further the amount of bhang was

not such as would attract the sentence imposed. When all these circumstances are considered, I am of the view that the trial court grossly misdirected itself on the sentence and came to and erred in principle by failing to take into account the core factors of this case and thus arrived at grossly excessive sentence which calls for my intervention.

Accordingly, I would set aside the sentence of 5 years imprisonment imposed on the appellant, and substitute therefor a sentence so far served with the consequence that the appellant should forthwith be released from prison custody unless otherwise lawfully held.

Dated and delivered at Nyeri this 31st day of July 2009

M. S. A. MAKHANDIA

JUDGE