REPUBLIC OF KENYA

IN THE HIGH COUT OF KENYA AT NAIROBI

CRIMINAL DIVISION

(*Coram: Ojwang, J*)

CRIMINAL APPEAL NO. 327 OF 2006

BETWEEN

GEORGE KARANJA NJOROGE.....APPELLANT

-AND-

REPUBLIC.....RESPONDENT

(An appeal from sentence imposed by Principal Magistrate K.W. Kiarie on 16th June, 2006 in Criminal Case No. 1309 of 2006 at the Kiambu Law Courts)

JUDGEMENT

The charge brought against the appellant was: being in possession of narcotic drugs contrary to s. 3(2)(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act (Act No. 4 of 1994). The particulars were that, on 12th June, 2006 at Muchatha Trading Centre in Kiambu District, within Central Province, the appellant herein was found being in possession of 38 rolls of narcotic drugs, namely bhang, which was not in the form of a medicinal preparation.

After the substance of the charge and every element of it was explained to the appellant herein, he replied: "I unlawfully had bhang". The prosecutor then made a statement: that on 12th June, 2006 Police Officers who were on night patrol, met the appellant at Muchatha, stopped and searched him, and found on him 38 rolls of bhang, which was taken away and produced in Court as an exhibit. To these facts, the appellant's response was: "Facts are true and properly put'. The appellant was then convicted on his own plea of guilty. After the prosecution asked that the appellant herein be treated as a first offender, he made a mitigation statement in which he sought leniency, pleading that he was unemployed.

In sentencing the appellant to three years' imprisonment, the trial Court thus stated.

> **"I have considered that the accused is a first offender. [But] drug-related offences are serious, and need to be discouraged**."

The appellant comes before this Court on appeal, setting out as his grounds the following:

> (i) that he is remorseful;

(ii) that the sentence of three years was unduly harsh;

(iii) that he is a father of three children who need his continuous care;

(iv) that his parents are old and ailing, and require his attention;

(v) that the Court do consider reducing sentence and setting him free;

In his submissions in this Court, the appellant made no denial of his statements admitting guilt in the trial Court, but sought to justify his appeal case by pleading that he had already learnt his lesson during imprisonment, and he now renounced the criminal act of being in possession of narcotic drugs. He also asked for forgiveness and for reduction of sentence in such a manner as to permit of an immediate release.

Learned State Counsel**, Mr. Makura** opposed this appeal. He urged that the law permitted the longer imprisonment-term of 10 years where an accused person is found in possession of narcotic drugs for personal use, and the much longer imprisonment-term of 20 years if the drugs so held were for "any other purpose". Counsel contended that the 38 rolls of bhang found in the appellant's possession could only have been for a purpose different from personal use – and, therefore, the applicable maximum sentence would have been imprisonment for 20 years; so, in the circumstances, the three-year imprisonment-term appealed against was "quite lenient". Counsel urged that the appeal be dismissed.

There are a good number of authorities on situations in which an appellate Court, such as this one, may interfere with the terms of the judgement of the Court below. Examples of such cases are: ***Nilsson v. Republic*** **[1970]** E.A. 599 **(*Harris, J*); *Shani v. Republic*** [1972] E.A. 557 (***Wicks, C.J***.); ***Wanjema v. Republic*** [1971] E.A. 493 **(Trevelyan, J.); *Sayeko v. Republic*** [1989] KLR; ***Ogalo s/o Owoura v. Reginam*** (1954) EACA 270.

The last-listed case, an appellate Court decision, sets out the pertinent principles which must guide this Court in disposing of the instant matter. The Court in that case stated (p. 270):

> "**The principles upon which an Appellant Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in *James v. R* (1950) 18 EACA 147, 'it is evident that the Judge has acted upon some wrong principle or overlooked some material factor.' To this we would add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case....."**

On the face of it, a sentence of three years' imprisonment out of a possible total of 20 years' imprisonment, could not be said to be harsh; and so on principle, it would not in law, be right to interfere with the sentence of the trial Court in this instance. But I have to come to *another* vital criterion, to determine whether this is a proper case for interference with sentence.

As was clearly stated by ***Trevelyan, J*** in ***Wanjema v. Republic*** [1971] E.A. 493 at P. 494,

> **"A sentence must in the end, however, depend upon the facts of its own particular case."**

Upon careful review of the facts of the instant case, I have found nothing which suggests that the three-year imprisonment-term imposed upon the appellant was anything but proper in all respects.

Consequently, I hereby dismiss the appellant's appeal, and affirm the sentence imposed by the Court below.

Orders accordingly.

DATED and DELIVERED at Nairobi this 11th day of February, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Tabitha Wanjiku

For the respondent: Mr. Makura

Appellant in person