

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

H.CR.C 58 OF 2007

MUTINDA KIEKEAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant was arrested on 3/3/2007 and later charged with the offence of being in possession of cannabis sativa contrary to section 3 (1) as read with section 2 (a) of the Narcotics Drugs and Psychotropic Substance Control Act No. 4 of 1994. He had 4 rolls of bhang and when he appeared for plea on 6/3/2007, he admitted the offence.
2. He was sentenced to 10 years in prison on 28/3/2007 the day the facts were read to him. I agree with Mr O'Mirera that it is good practice to take the plea and facts together, which did not happen in this case.
3. The Appeal is limited to sentence and the Appellant only says that he has a family to take care of and that the bhang was for his own use.
4. An appellate court can only interfere with sentence if the trial court misapplied or misapprehended the law applicable. In this case, the plea may have been poorly taken and injustice occasioned to the Appellant. However, he admitted the offence.
5. The sentence in my view is however harsh in the circumstances and I deem it proper to interfere with it.
6. I will allow the Appeal to the extent that the sentence is reduced to a sentence of two (2) years from the date the Appellant was sentenced i.e. 28/3/2007.
7. Orders accordingly.

Dated and delivered at Machakos this 3rd day of April 2008.

ISAAC LENAOLA

JUDGE