



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISII**

**Criminal Appeal 70 of 2008**

**MARY AOKO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From original conviction and sentence in the Resident Magistrate's Court Homa Bay Criminal Case No.278 of 2008 by E. K. MWAITA ESQ., RM)**

**JUDGMENT**

The appellant was convicted on her own plea of guilty on a charge of being in possession of chang'aa contrary to section 3(1) as read with section 4(1) of the Chang'aa Prohibition Act. She was sentenced to two years' imprisonment without the option of a fine. The appellant was a first offender. The appellant was aggrieved by the said sentence and preferred an appeal to this court.

The trial court meted out the maximum custodial sentence. It is trite law that a first offender should not be

sentenced to the maximum sentence provided by the law unless there are exceptional circumstances which ought to be recorded or where the law provides no other option, see NILSON VS REPUBLIC [1980] E.A. 599. The lower court sentence is hereby set aside and substituted therefor with a sentence to a fine of Kshs.5000/= in default three months' imprisonment from the date of conviction and sentence by the trial court.

**DATED, SIGNED and DELIVERED at KISII this 28<sup>th</sup> Day of July, 2008.**

**D. MUSINGA**

**JUDGE.**

Delivered in open court in the presence of:

The Appellant

Mr. Kemo, Senior Principal State Counsel for the Republic

D. MUSINGA

**JUDGE.**