

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

Criminal Appeal 331 of 2007

STEPHEN MUTURI MAGONDU..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an appeal from the judgment of P.C. Tororey,

Ag. Principal Magistrate in Senior Resident Magistrate's

Criminal Case No. 158 of 2007 at Karatina)

JUDGMENT

The appellant was charged and convicted on his own plea of guilty to charge of ***being in possession of bhang contrary to section 3(1) as read with section 2(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994.*** He was charged of ***being in possession of two stones of cannabis sativa*** which were not in a form of medical preparation. On the facts being read to the appellant, the appellant confirmed them to be correct. The facts were that on 10th February 2007 police officers received information that the appellant was selling bhang at Ndima-ini shopping centre. They proceeded there and introduced themselves. They requested to search the appellant's shop which he agreed. On searching they recovered two stones of bhang not in a form of medical preparation. The court convicted the appellant on his own plea of guilty and sentenced him to four years imprisonment. With that background the appellant's appeal against conviction fails. The basis upon which he sought his appeal against conviction was that the learned magistrate failed to inform him the consequences of pleading guilty. He further stated that his mitigation was misunderstood. The lower court's record which is the only record this court has to go by indicates that on the appellant on being invited to mitigate before the sentence he offered no mitigation. I have considered the appeal against the sentence and I find that it is not excessive in the circumstances. The maximum sentence for this offence is ten years. The appellant even though the facts indicate that he was caught selling the bhang was sentenced to four years. That sentence in my view was lenient. There is no reason shown why this court should interfere with it. In the end therefore the appellant's appeal against conviction and sentence is hereby dismissed.

Dated and delivered at Nyeri this 7th day of October 2008.

MARY KASANGO

JUDGE