

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 203 of 2008

JAMES NDERITU WAMBUGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

JAMES NDERITU WAMBUGU, the Appellant, was charged with breaking into a building and committing a felony contrary to **Section 306(1)** of the **Penal Code** and being in possession of cannabis sativa (bhang) contrary to **Section 3(1)** as read with **Section 3(2)(b)** of the **Narcotic Drugs and Psychotropic Substances Act**. He pleaded not guilty to both charges but upon trial before the Resident Magistrate at Nyahururu and sentenced to four years imprisonment on count one and three years imprisonment on count two. He has appealed against both the conviction and sentence.

The Appellant made a very short submission. He contended that the complainant tramped up the charge against him because he had a case with his father. On sentence he submitted that the same is harsh and should be reduced. Mr. Mugambi opposed the appeal and said the Appellant was convicted on overwhelming evidence.

I have considered these submissions and read the lower court record. While the Appellant's uncle, Paul Kariuki Gathuma, PW1, was in remand over some offence he had committed he learnt that his house had been broken into and his maize had been stolen. William Maina Nderitu, PW2, testified that on the material date he met the Appellant on the way who informed that he had some maize for sale. As the witness was interested in buying maize he followed the Appellant to his home to buy it. On the way they met somebody else who also took interest in buying some maize. Instead of the Appellant taking them to his home he took them to PW1's house where they found three half full bags of maize outside PW1's house. As Appellant went to get a container to weigh the maize, Appellant's father and cousin warned the witness that that was stolen maize. On learning that the witness refused to buy it.

Samuel Rugu Mwangi, PW3, testified that on 28th February 2006 at about 10.00 a.m. he passed by PW1's house and saw Appellant outside with maize. He knew that the complainant was in remand but he did not bother because he thought that the complainant had left his nephew, the Appellant to take care of his house in his absence. He later learnt that the Appellant was upto no good and was actually stealing the complainant's maize.

On his arrest by PW4, the Appellant was found with a substance which the Government Analyst confirmed was bhang. In his defence the Appellant claimed that this charge was tramped up against him because his father had lodged with the police a complaint against the complainant and on being released the complainant caused this charge to be brought against him.

If this was a charge tramped up against the Appellant by PW1, which I do not believe, neither PW2 nor PW3 had any reason to lie against the Appellant. There is nothing to show that they were sucked into the Appellant's problem with PW1, if any. Besides that Appellant's own cousin and father are the ones who dissuaded PW2 from buying the stolen maize.

On the evidence on record and what I have just stated hereinabove, I am satisfied that the Appellant's conviction was based on overwhelming evidence. I therefore dismiss the appeal against conviction. I also dismiss the appeal against sentence as it is not harsh as claimed by the Appellant. In the upshot this

appeal is hereby dismissed in its entirety.

DATED and delivered at Nakuru this 11th day of December, 2008.

D. K. MARAGA

JUDGE