



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 37 of 2006

[From Original Conviction and Sentence in Criminal Case No. 4288 of 2004 of the Principal Magistrate's Court at Nyahururu – H.M. NYABERI – R.M]

NJOROGE MWANGI KABUBANI APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The appellant, *Njoroge Mwangi Kabubani* was charged with two counts of house breaking contrary to Section 304(1) and stealing contrary to Section 279 (b) of the Penal Code.

The appellant also faced a third count of being in **possession of *Canabis Sativa (Bhang)*** contrary to **Section 3(1) (2) of the Narcotic drug and Psychotropic Substance Act.**

The particulars of the charge stated that on the 19th day of September 2004, at Ndemi Village in Nyandarua District within Central Province, broke the dwelling house of ***Priscilla Muthoni*** with intent to steal therein and did steal milk can, sufuria 12, sufuria lids, radio make Nova, frying pan, a knife, gumboot; the property of the said ***Priscilla Muthoni*** all valued at Kshs.20,000/-.

The particulars of count two stated that on 25th day of September 2004 at Ndemi Village in Nyandarua District within Central Province broke and entered the dwelling house of ***Catherine Wangui Thiga*** with intent to steal therein and did steal; fencing wire, mesh wire, two hammers, two squares, one hacksaw, two handsaw, one plumb bob, one chisel, spirit level, two novel, the property of ***Francis Njuguna Gachangi*** all valued at Kshs.3,500/-.

The particulars of count three stated that on the 29th day of September 2004 at Ndemi Village in Nyandarua District within Central Province was found in possession of 5gms of *cannabis sativa* (bhang) which was not in medical preparation.

The appellant pleaded guilty to all the charges and was thus convicted on his own plea of guilty of all the three charges. The appellant was sentenced to four (4) years imprisonment in respect of the first and second counts, and six (6) months imprisonment in respect of the third count and the sentence in respect of the first and second count to run concurrently while the sentence in respect of the last count is to run consecutively.

The appellant is only appealing against the sentence.

This being the first appeal, this court has a duty to reconsider the evidence that was before the trial court, evaluate and draw its own conclusions. In this case, the appellant is only appealing against the sentence. The facts of the case show that on 19th September 2006, the appellant broke in a dwelling house and stole items which were valued at Kshs.20,000/-. On 25th September 2004, the appellant broke into a dwelling house and stole items that valued at Kshs.3,500/- and in respect of the third count, he was found in possession of 5gms of *cannabis sativa*.

I have considered the sentences meted out against the appellant by the trial court. In respect of the first and second count, the law provides for a maximum sentence of fourteen (**14**) years. I am of the opinion that the trial magistrate was extremely lenient and there is no justification of interfering with the sentence. It is not a harsh sentence considering the circumstances of the case.

Similarly, the sentence in respect of the third count is lenient as the law provides for a maximum of ten years.

In the circumstances, I find no merit in this appeal and the same is dismissed. The sentence imposed by the lower court is hereby confirmed.

Dated and delivered this 19th day of January 2007.

MARTHA KOOME

JUDGE