

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 14 of 2004

GEOFFREY NGANGA KARANGA.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being appeal against conviction and sentence by G. P. NGARE, (D.M. II Prof.) in the Resident Magistrate's Criminal Case No. 2069 of 2003 at Kigumo)

JUDGMENT

The Appellant herein was charged with being in possession of *cannabis sativa* contrary to *Section 3(1)* as read with *Section 3(2)* of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994. On the charge being read out to the Appellant, the Appellant pleaded guilty. On the facts being related to the court by the prosecution the Appellant admitted the facts. The Appellant on being convicted was sentenced to pay a fine of Ksh.100,000/- and in default three months imprisonment.

The Appellant has petitioned this court with an appeal against sentence. In one of his grounds the Appellant stated that the sentence was harsh and excessive. The appeal was opposed by the State on the basis that the sentence was not excessive.

The section under which Appellant was convicted provides for a sentence of twenty years. In considering whether this court should interfere with the sentence imposed by the trial court, this court will consider whether the trial court based its sentence on the wrong principle or overlooked any material factor and on whether it was manifestly excessive. This indeed was the finding in the case of **Macharia V Republic [2003] 2 EA 559**. The holding of that case was as follows:

“ An appellate court will not review or alter a sentence imposed by the trial court on the mere ground that if the appellate court had been trying the appellant it would have passed a somewhat different sentence, and will not ordinarily interfere with the discretion of a trial judge unless the Judge acted on some wrong principle or overlooked some material factors or issued a sentence that was manifestly excessive”.

Taking into account the principles upon which this court will interfere with sentencing, I am of the considered view there is no basis upon which I can interfere with the trial court's sentence. In any case the Appellant has already served his sentence by the time this appeal was heard. The Appellants appeal therefore is hereby dismissed.

Dated and delivered this 23rd March 2007.

MARY KASANGO

JUDGE