



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Criminal Appeal Case 137 of 2005**

**PAUL MUNENE NDEGE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

In this appeal the appellant was charged with the offence of being in possession of Cannabis Sativa Contrary to Section 3 (1) and (2) a of Narcotic Drugs and psychotropic Substance Control Act of 4 of 1994. He was convicted and sentenced to 7 years imprisonment. He has filed 4 grounds of appeal.

The prosecution evidence is that the Assistant Chief (PW1) who did not know the accused very well testifies that on 25/6/2005 he was with the chief on a regular patrol along River Nyamidi. There was also one member of their vigilant group. He saw appellant who was sitting on a stone smocking. He was with another person on seeing the assistant chief they wanted to escape but could not cross the river. However, the young man managed to run away leaving behind the paper bag and the appellant. When the paper bag was opened there was inside it 190 rolls of what was suspected as bhang. The bhang was being rolled and the tools for rolling were there. The appellant was arrested and taken to his shop (kiosk) he refused to open to the Assistant Chief. He only opened when APC Njuguna came. On going inside the chief, Assistant chief and APC Njuguna found a paper bag on the counter and when they opened they found 19 stones of bhang. The witnesses were led to the river where the appellant and his companion were sitting by the smell of bhang. The evidence of PW2 corroborates that of PW1 in every respect.

Later the plant materials were submitted to Government Chemist and a report came saying “**The plant materials were examined and it is established to be Canabis Sativa included in the Narcotic Drugs and Psychotropic Substances Control Act 4/94**”.

In his defence the appellant opted to give unsworn statement. He admitted that he was at the river to take a bath. While there he saw PW1 and PW2 his companion ran away and he was arrested. He complained that the witnesses went to his shop (Kiosk) and after a search was conducted nothing was found.

The facts as stated are correct and also confirmed by the appellant. The 190 rolls of bhang was found with him. 19 stones was found in his shop (Kiosk). I do not find any reason to doubt the evidence of the chief and his assistant. It was not challenged. I do not find that their evidence was in any way obtained unlawfully.

I find no evidence that there was an officer who owned a house where the alleged bhang was said to be and therefore the witness could not be called. The prosecution is within its right to call any witness it wishes. It may omit calling any witnesses at its peril but in this case the evidence offered to court was

sufficient to support a conviction. The other person with accused was not arrested, he ran away. Therefore it was not a case of withdrawing the charge against him. The charge was against the Appellant only.

I therefore find the grounds of appeal without merit. The upshot is that the prosecution evidence did not prove the offence beyond all reasonable doubt and I find the conviction was based on sound and safe evidence. I find no reason to interfere. I therefore dismiss the appeal.

Dated this 17<sup>th</sup> July, 2007.

**J. N. KHAMINWA**

**JUDGE**

**17/7/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Kimathi for State**

**Appellant present in person**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**