



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA

**Criminal Appeal 111 of 2007**

*(From Original Conviction and Sentence in Criminal Case No. 1093 of 1996 of the Senior Resident Magistrate's Court at Voi: J.M. Gandani – R.M.)*

SOPHIA MKAYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

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**JUDGEMENT**

The Appellant was upon trial on a charge of being in possession of narcotic drugs contrary to Section 3(1) of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994 convicted and sentenced to two years imprisonment. She has appealed against both that conviction and sentence.

Having perused the record I agree with both Mr. Mokaya for the Appellant and the learned State Counsel that there was no evidence to prove that the Appellant was indeed in possession of the alleged Cannabis Sativa (Bhang). The evidence before the court was that the bhang was found wrapped in a khaki paper inside a black polythene bag buried in the cow shed. There was no evidence that the Appellant had knowledge of the bhang being there or that she was the only one who had access to that cow shed.

In the circumstances I allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered this 9<sup>th</sup> day of October 2007.

**D.K. MARAGA**

JUDGE