

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 297 of 2006

(From original conviction and sentence in Criminal Case No. 2482 of 2006 of the Chief

Magistrate's Court at Makadara by Mr. K. Muneeni SRM).

MERCY WAMBUI GAKUNGA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

MERCY WAMBUI GAKUNGA, the appellant, was charged in the Subordinate Court with the offence of being in possession of narcotic drugs contrary to section 3(1) as read with section 3(2)(a) of the Narcotic Drugs and Psychotropic substance (control) Act No. 4 of 1994. The particulars of the offence were that on 22nd April 2006 at Dandora phase three estate Nairobi within Nairobi Area was found in possession of Narcotic drugs (bhang) to wit six (6) rolls of bhang with a street value of Kshs.60/= not in medical preparation. The appellant was recorded as having pleaded guilty, was convicted and sentenced to serve 4 years imprisonment. Being dissatisfied, the appellant has appealed to this court on sentence.

Learned State Counsel, Mr. Makura, opposed the appeal on sentence. Counsel contended that the appellant was sentenced to 4 years imprisonment while the maximum sentence for the offence is 10 years imprisonment when the narcotic drugs are for personal use, and 20 years imprisonment whether the drug are for any other use. Counsel contended that the sentence was neither harsh nor excessive.

In response, the appellant submitted that she was asking for forgiveness.

This is an appeal on sentence. Sentencing is essentially the discretion of the sentencing court. An appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these the sentence is so harsh and excessive that an error of principle must be inferred – see **SHADRACK KIPROTICH KOGO –VS- REPUBLIC – Criminal Appeal No. 253 of 2003 Eldoret (C.A).**

In our present case, the maximum sentence for the offence charged is 10 years imprisonment. The appellant was a first offender. The Subordinate Court took into account that the appellant was a first offender before sentencing her to serve 4 years imprisonment. However, the learned magistrate did not take into account that the value of the narcotic drug (bhang) was only Kshs.60/=. Also the magistrate did not take into account that the appellant pleaded guilty before trial commenced, and she therefore did not waste the courts time. In my humble view, had the learned magistrate taken into account the above relevant factors, she would have meted a more lenient sentence than the 4 years imprisonment. On that account, I will interfere with the sentence and reduce it to 2 years.

Consequently, I allow the appeal on sentence. I set aside the sentence of 4 years imprisonment imposed by the Subordinate Court. I order that the appellant will serve 2 years imprisonment from the date on which she was sentenced by the Subordinate Court.

Dated and delivered at Nairobi this 5th day of November, 2007.

George Dulu

Judge

In the presence of –

Appellant in person

Mr. Makura for State - absent

Eric – court clerk