



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Criminal Appeal 485 of 2004

ALI IREGI GITHINJI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant was convicted for the offence of **TRAFFICKING IN NARCOTIC DRUGS** contrary to **Section 4(a)** of **Act No. 4 of 1994**. He had pleaded guilty to the offence. He was then sentenced to 50 months imprisonment. He now appeals against the sentence.

The Appellant in his oral submissions argued that the sentence was excessive. That he had not been given an opportunity to mitigate. That since he was remorseful for the offence and had realized with remorse the seriousness of the repercussions of drugs, he sought a reduction for the sentence. The Appellant submitted further that he had reformed while in remand. He said he was 19 years old and sought for forgiveness.

The appeal was opposed.

**MR. MAKURA**, learned counsel for the State submitted that the offence for which the Appellant was convicted carried a maximum sentence of 10 years imprisonment. That 50 months imprisonment was therefore neither excessive nor harsh. He urged the court not to interfere with the sentence.

I have carefully considered this appeal. In the case of **SAYEKO vs. REPUBLIC [1959] KLR 306**, it was held:

***“The appellate court will not ordinarily interfere with the discretion exercised by the lower court unless it is evident that the lower court has acted upon some wrong principle or over looked some material factor or the sentence is manifestly excessive in the circumstances of the case.*”**

***A plea of guilty from a first offender requires recognition as a matter of principle.”***

I am persuaded by this decision. I have perused the record of the trial court and nowhere did the learned magistrate give the Appellant an opportunity to give his mitigation and further the learned trial magistrate did not give recognition of the fact that the Appellant had pleaded guilty to the charge therefore saving court’s time. The learned trial magistrate did not also recognize that the Appellant was a young person. The court gave more weight to the seriousness of drug cases generally. In so doing I find that the learned trial magistrate overlooked material factors and that these factors dictated a less severe sentence than the one imposed. In those circumstances I find that the sentence of 50 months imprisonment was excessive and manifestly harsh having considered the Appellant pleaded guilty, was a first offender and that the

amount of drug involved was 19 rolls of bhang and therefore not enormous. I do appreciate however that, however small bhang is, it is undesirable to any society and no one should be treated by the court in such a manner as to serve as an inducement to continue involvement in possession of the same

I will allow the appeal in part by setting aside the sentence of 50 months imprisonment and in substitution thereof sentence the Appellant to 2 (two) years imprisonment from the date of sentence in the lower court.

Dated at Nairobi this 27<sup>th</sup> day of March 2006.

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**LESIT, J.**

**JUDGE**

Read, signed and delivered in the presence of;

Appellant - present

Mr. Makura for State

CC: Huka

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**LESIT, J.**

**JUDGE**