



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI**

Criminal Appeal 94 of 2004

(From original conviction and sentence Kilifi Cr.Case No. 643 of 2004 before Mr.C.O.Obulutsa SRM)

SIZA MLANDA NYALE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This is an appeal against sentence only, the appellant having pleaded guilty to the offence of being in possession of narcotic drugs contrary to Section 3 (1) as read with Section 2 (b) – (The recorrect provision is Section 2 (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act.

The particulars of the charge being that on 1st September, 2004 at Majengo village, Kilifi, the appellant was found in possession of 25 rolls of Cannabis sativa (bhang) which were not in medicinal preparation. After pleading guilty the appellant was sentenced to 4 years imprisonment. It is this sentence he has challenged in this appeal as being harsh. The High Court in exercising its appellate jurisdiction can only interfere with a sentence passed by the lower Court, where the appellant pleaded guilty, if the sentence was excessive, in the circumstances of the case, or illegal.

A person who has been found or pleaded guilty to a charge of being in possession of drugs under Section 3 (1) of the Narcotic Drugs and Psychotropic Substances (control) Act, is liable under the second limb of subsection 2 (a) of the said Act to imprisonment for 20 years. Clearly the sentence of 4 years is both within the provision of the law and not excessive. I find no merit in this appeal. The same is dismissed.

Dated and delivered this 10th day of November 2005 at Malindi.

W. OUKO

JUDGE

8.11.2005

Coram

W. Ouko

Judge

Mr.Ogoti for state

Appellant not brought

Judgment deferred to 9th November 2005

Preliminary objection to issue.

W.OUKO

JUDGE

9.11.2005

W.Ouko

CC: Gladys

N/a Mr.Ogoti for state

Court: Judgment deferred to 10.11.2005.

W.OUKO

JUDGE

10.11.2005

Coram

W.Ouko, J.

Mr.Ogoti

Appellate present

CC. Gladys

Judgment delivered.

W.OUKO

JUDGE