

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL 445 OF 2002

GERALD MUCHIRI KIRUMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Gerald Muchiri Kiruma hereinafter referred to as the appellant was tried and convicted by the Senior Principal Magistrate Murang'a for the offence of Being in Possession of Bhang Contrary to Section 3(1) as read with Section 3 (2) of the Narcotic Drugs and Psychotropic Substance Control Act No.4 of 1994. He was sentenced to serve 10 years imprisonment. Being aggrieved He has now appealed against his conviction and sentence.

During the trial before the lower court, a total of 8 witnesses testified. Their evidence was that on the material day, the appellant was traveling in a matatu Registration Number KAL 847R which was traveling from Nairobi to Gitugi via Kiriaini.

P. C. Raphael Paul Mwita (P.W.1) and P.C. Benjamin Kiswili (P.W.7) who had received a tip off, laid an ambush and stopped the vehicle at Kiriani.

They took the vehicle to Kiriaini Police Post and ordered all the passengers to come out with their luggages. They searched the vehicle and recovered 4 luggages which were not claimed. The luggage contained 21kg of plant material suspected to be bhang.

The appellant was also searched and 1 roll of bhang recovered from him. Investigations were carried out and Harun Kahuga the conductor of the matatu identified the appellant as the passenger who had boarded the matatu with the 4 packages. One passenger Anne Wangui Mbao (P.W.6) also identified the appellant as the person she had seen with one of the packages which was in a yellow paper bag.

The plant material was forwarded to the Government analyst where it was examined by Simon Ndumbi Atebe a government analyst who confirmed that the plant material was cannabis sativa included as a narcotic drug under the Narcotic Drug and Psychotropic Substances Control Act 1994. In his defence the appellant admitted having boarded the Matatu but maintained that He did not have any luggage.

I have reconsidered and evaluated the evidence that was before the trial magistrate. It is evident that the question was whether the appellant was established to be in possession of the cannabis sativa which was recovered from the matatu in which the appellant was a passenger. Harun Kahuga and Anne Wangui Mbao both testified that the appellant was the one who had one of the packages found to contain the cannabis sativa.

Both witnesses recalled one of the luggages very well as it was in a yellow paper bag which P.W.6 explained the appellant had to put down to enable her pass. It is evident that all the people who were in the matatu were locked in the cells while the police carried out their investigations. This did not however vitiate the evidence of P.W.3 and P.W.6. There were many other passengers in the matatu and they had no reason to pick on the appellant and accuse him falsely. The trial magistrate who assessed the demeanour of the witness believed that these two witnesses spoke the truth. I have no reason to depart from this

finding. In the circumstances the defence of the appellant which was just total denial could not hold. I find that there was sufficient evidence in support of the appellant's conviction.

As regards the sentence, from the certificate of previous conviction the appellant had two relevant previous convictions (even though trial magistrate spoke of one). The quantity of the bhang was also large. In the circumstances the sentence of 10 years was well merited. It is neither harsh nor excessive such as would justify the intervention of this court.

I therefore find no merit in this appeal and do dismiss it.

Dated, signed and delivered this 6th day of December 2005. H. M. OKWENGU

JUDGE