

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 86 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 60 of
2003 of the Resident Magistrate's Court at Wundanyi - A. Ngugi –
RM).

DICK CHAMA ALI MWASHIGADI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with the offence of being in possession of cannabis sativa contrary to Section 3(1) as read with Section 3(2) of the Narcotic drugs and Psychotropic substances Control Act No. 4 of 1994. He was convicted and sentenced to serve 3 years imprisonment. He now appeals against conviction and sentence.

The Prosecution evidence is that PW1 CPL. Moses Kabobo was with another officer on foot patrol at 12.00 noon, when they received information that someone was selling bhang in Kitukunji. He with other officers went to the place and met appellant in his house standing by the door. They searched him and in his pocket found 18 rolls of bhang. They took accused and bhang to the Police Station. The Police officers said they were with the informer when they reached the appellant's house. They did not disclose who was the informer. The appellant suggests that it was his wife DW2. On perusing the appellant's defence it is clear that he was found by the Police witnesses at the door of his house. He himself says he was searched and bhang was found in the pocket of his shirt. His witness was his wife. Both disclosed that there had been family differences and the wife had gone to seek assistance from the Police and she was present at the scene. Her evidence tends to water down the defence statement by imputing that the Police witnesses pretended to put the bhang in the pocket of appellant. This the appellant had not said. I find the evidence of the defence witness suspect. She had a grudge against her husband the appellant. Nevertheless discarding the evidence of DW2, the wife, it is clear that PW1 did find the appellant with the rolls of bhang. The defence put forward by the appellant confirms that fact.

The evidence of the prosecution witnesses was clear and straightforward and there is no reason to doubt the same. The allegations now made in the grounds of appeal are not in accordance of evidence tendered in the court both by the prosecution or the defence and there are not relevant or helpful at this stage.

I find that the appellant was found with the bhang and was guilty as charged. The evidence of the prosecution was sufficient to prove the charge beyond reasonable doubt. I find the sentence of 3 years in jail not excessive or harsh.

I therefore find no reason to interfere with the conviction and sentence.

The appeal is therefore dismissed. Dated this 19th day of January 2004.

JOYCE KHAMINWA

J U D G E

Read in open court in the presence of: Appellant

State Counsel Mrs. Mwangi

JOYCE KHAMINWA

JUDGE