



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL. 55 OF 2003**

**PETER MUSEMBI KATOLO KIOKO.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**J U D G E M E N T**

The appellant was charged before the Senior Resident Magistrate's court Kangundo in CRC No. 800 of 2002 with an offence of being in possession of Cannabis Sativa contrary to section 3(1) as read with section 3 (2) of the psychotropic substances control Act no. 4 of 1994. He pleaded guilty to the offence, was convicted on his own plea and was sentenced to serve 5 years imprisonment. He has appealed. From the grounds of appeal it is clear that he has no problem with the conviction but the sentence which he feels is excessive.

The appellant was found with 4 rolls of bhang. After conviction he was treated as a first offender and pleaded that he had a child and wife. Counsel for the state supports the sentence as the maximum sentence under the Act is 10 years together with fine. All circumstances considered I do agree with the appellant that the sentence was very excessive. He had only 4 rolls of bhang. Being a first offender a fine or other non custodial sentence should have been considered before a custodial sentence was handed down on the appellant. The appellant was convicted and sentenced on 30.12.2002. He has already served over one year which I find to be still excessive. I will allow the appeal on sentence and substitute the sentence of 5 years imprisonment with the period served of about 1 year 2 months and the appellant should be set free forthwith unless lawfully held for some other reason.

Dated, read and delivered at Machakos this.....day

of.....,2004.

**R. WENDOH**

**JUDGE**