

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 312 OF 2003

**(from Original Conviction and Sentence in Criminal Case No. 285 of 2003
of the senior Resident Magistrate's Court at Wundanyi A. Ngugi RM)**

SAMUEL MWAKIO 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 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 pleaded not guilty and after a full trial before the Resident Magistrate at Wundanyi he was convicted and sentence to six years imprisonment. He has appealed against both the conviction and sentence.

At the hearing of the appeal the Appellant maintained his stand that he was not found with the alleged bhang. He said he had been to hospital for treatment and was resting outside his aunt's house when he saw the two people being chased. Then two Aps went to him and asked him whether he knew those people. He denied whereupon they arrested him alleging that he had bhang.

Mr. Monda, learned state counsel, rightly does not support the conviction. He said that the eye witness account of P.W.1 and P.W.2 is contradicted. I have perused the record and I agree with Mr. Monda. P.W.1 said that the Appellant was with four other people behind a house. When they saw the Aps they ran away but the Aps managed to arrest the Appellant with a black paper bag which had 700 grams of bhang. P.W.2 on the other hand said that the Appellant and his companions were beside the road when they first saw them. In view of this contradiction the Appellant should have been given the benefit of doubt. The Appellant's account has been consistent all through.

For these reasons I find that the Appellant's conviction was not safe and cannot be left to stand. I therefore allow this appeal, quash the conviction and order that the Appellant be set free forthwith unless otherwise lawfully held.

DATED this 22nd day of March 2004.

D.K. Maraga

Ag. JUDGE