REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE
CRIMINAL APPEAL NO. 108 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 223 of 1999 of the Resident Magistrate's court at Makueni, J. K. Kiia Esq. on 1.8.2000)

CHARLES MUTETI MULWA .....APPELLANT

VERSUS

REPUBLIC :.....RESPONDENT

Coram:
J. W. Mwera J.
Ndungi Advocate for Appellant
Mrs. Murungi State Counsel for Respondent
C.C. Muli

J U D G E M E N T

The appellant was charged with possession of canabis sativa (bhang) C/S. 3(1) as read with S. 3(2) of the now well known Drugs Act of 1994. That on 30.8.99 at Kilala market Makueni he was found with 4 rolls of bhang which were not in medical preparation.

The Learned Trial Magistrate at Makueni heard the case. At its conclusion he found the appellant guilty and imposed on him 3 years imprisonment. He observed that the appellant had been fined for 2 similar offences in the past and so this time round the prison term was to be handed down. Mr. Ndungi filed a 9-point appeal which he argued globally. That the appellant was arrested for disturbance and using abusive language in a bar yet he was charged with the present offence.

Mr. Ndungi submitted that because one of the 2 witnesses A.P.C.Sang (P.W.2) knew the accused, a clothes vendor at Kilala market before, there could have been a frame-up in the prosecution in the lower court. That the Learned Trial Magistrate ought to have disbelieved the prosecution witnesses 10 when they claimed that the appellant had resisted arrest because no charge in that regard was preferred. That because the 2 witnesses did not search the appellant on the spot (inside the bar) doing so later at the chief's camp enhanced chances of planting the bhang on him. That while someone else like a bar patron at the scene when everything started would have given rather independent evidence, the Learned Trial magistrate fell in error when he relied on the evidence of the 2 prosecution witnesses to convict yet he disbelieved the appellant. That had mitigating factors been well regarded, the excessive sentence of 3

years would not have issued.

The Learned State Counsel had a contrary view saying that the evidence 20 before the Learned Trial Magistrate was congent, safe to base on a conviction without requiring some other evidence. That there was no proof of grudges between the appellant and AP Cpl. Mwangangi and APC Sang (P.W.1 and 2) who arrested him. That the appellant tried to resist arrest – hence his being conveyed to the chief's camp where he was searched and the 4 rolls, which the applicant analyst certified as canabis sativa, were recovered. That the sentence was in order for one with two previous convictions of similar nature.

After going over the evidence for the prosecution and the defence in the lower court, this court also perused the Learned Trial magistrate's judgement. He addressed all material placed before him in detail. At the end of the day the Learned Trial Magistrate believed the prosecution case and not that of the appellant. He believed that the appellant was arrested for using abusive language at a bar. But he resisted being taken to the chief's camp. The Learned Trial Magistrate also believed that the 10 appellant removed his clothes in the same act of resistance and not that P.W.1 and 2 tore them from his back.

On this court's own look at all this, it has no reason to derogate from the lower court findings. The claim of grudges was not proved or shown to have any merit and in any case the appellant had committed similar offences in the past. The latter part properly came up after the Learned Trial Magistrate was satisfied as this court is, that indeed the appellant was found in possession of 4 rolls of bhang which the government chemist certified as canabis sativa. 20 For the past records of the appellant the 3 years term imprisonment was deserved.

In sum this appeal is dismissed in its entirety.

Judgement accordingly.

Delivered on 18th December 2000.

J. W. MWERA

JUDGE