

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL 165 OF 2004

CATHERINE NDINDI PETER ::: APPELLANT

VERSUS

REPUBLIC ::: RESPONDENT

J U D G E M E N T

Catherine Ndindi Peter was convicted by Resident Magistrate's Court Makindu for the offence of being in possession of Chang'aa Contrary to Section 3 (1) of the Chang'aa Prohibition Act Cap 70. She was sentenced to six months imprisonment. The appeal is against the sentence. The counsel for appellant argues that the appellant should have been given an option of a fine. The penalty section in Cap 70 is Section 4 (1) which provides that a person who contravenes Section 3 of the Act shall be guilty of an offence and liable to a fine not exceeding 10,000/= or to imprisonment for a term not exceeding 2 years or to both fine and imprisonment.

The prosecutor did not avail previous records in respect of the appellant. She must have therefore been treated as a first offender. Even though the magistrate observed that the offence is prevalent he should have considered an option of fine first. There were no aggravating circumstances to warrant a custodial sentence. The magistrate should be sensitive to use of alternative sentencing methods and help decongest prisons. The appellant has already served one month and about two weeks from the date of sentence which is 2/11/04. In my view, the sentence already served is sufficient and the court sets aside the sentence of six months imprisonment and substitutes it with the sentence so far served. She is hereby set at liberty unless otherwise lawfully held.

Dated at Machakos this 16th day of December 2004

R.V. WENDOH

JUDGE