

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 191 OF 2002

ROBERT MUEMA MUTISYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

The appellant in this case was convicted on two counts. In count one he was convicted of causing grievous harm contrary to section 234 of the penal code whereas in count two he was convicted of possession of cannabis sativa contrary to section 3(1) as read with section 2(a) of the Narcotics Drugs and Psychotropic Substances Act. She was sentenced to 4 years with 4 strokes of the cane on count one and to serve 18 months imprisonment in cunt two. Sentences were to run concurrently. I have noted from the outset that the state supports the convictions arguing that it was arrived at after careful analysis of the evidence adduced by the prosecution witnesses. I have also noted that the complainant's evidence as to the identification of the appellant was corroborated by her adult daughter who testified as PW 3 in this case. The incident occurred during broad day light 3.00p.m. so that the possibility of any mistaken identification of the appellant is most unlikely. I have also noted that the appellant was related to the complainant thus strengthening the chances of the complainant's identification of the appellant. I have noted that the learned trial magistrate addressed the above issues in his considered judgement.

He considered the issue of recognition or identification of the appellant. He also considered the evidence of the complainant as corroborated by the evidence of PW 3. I am satisfied that the trial magistrate correctly addressed himself to the issues in dispute and arrived at a proper verdict. The sentence arrived at was quite fair in my own view. I, therefore, dismiss the appellants appeal against both conviction and sentence accordingly.

Dated, read and delivered at Machakos this.....day of.....,2002.

R. MUTITU

JUDGE