

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
APPELLATE SIDE
CRIMINAL APPEAL NO. 194 OF 2000

**(From Original Conviction and Sentence in Criminal Case No. 945 of
2000 of the Senior Resident Magistrate's Court at Kangundo: B. Maloba
Mrs. on 5.12.2000)**

MWANZA NDAMBUKI ::: APPELLANT

VERSUS

REPUBLIC ::: RESPONDENT

**Coram: J. W. Mwera J.
Mrs. Thoronjo Advocate for Appellant
Orinda State Counsel for Respondent
C.C. Muli**

J U D G E M E N T

20 The appellant was charged with possession of bhang at Kangundo town on 4.12.2000 – 3 kg. That this was C/S. 3(1) (2) (a) of the Narcotic Drugs Act No.4/94 because it was not in medical preparation.

After a plea of guilty the Learned Trial Magistrate imposed a 3 – year prison term with effect from 4.12.2000. Initially the appellant filed his appeal through the prison but then later Mrs. Thoronjo filed a supplementary petition containing two prayers which she argued. The court heard that the plea was not unequivocal and that the sentence was harsh and excessive. The Learned State Counsel opposed the appeal.

Going by the lower court record the charge was read and explained in English translated into Kikamba, and it was admitted as true by the appellant. Facts followed in that acting on information police officers traced the appellant taking tea at a certain eating house. He was searched and a green bag was recovered containing the bhang. He was arrested and later charged. The facts were admitted, a conviction on a plea of guilty entered and mitigation heard. The appellant was treated as a first offender. The prosecutor added that the offence was prevalent. The appellant said that he had children in schools. Then sentence followed.

This court is satisfied that the plea was properly taken. After the appellant admitted the charge and the facts constituting it, there was no need to tender further evidence e.g of a government analyst's report about the substance being actually bhang. This could only come in if the appellant had denied the offence and the State was obliged to call evidence in proof. Conviction was proper.

20 As far the sentence, it was lawful even as it was lenient. Three (3) kilograms of bhang is a large amount and it was said that bhang offences were prevalent in the area.

In sum this appeal is dismissed in its entirety.

Judgement accordingly.

Delivered on 12th February 2001.

J. W. MWERA

JUDGE