

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 146 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 2985 of 2000 of the Senior Principal Magistrate's Court at Machakos: S.M.S. Soita Esq. on 11.10.2000)

**NICHOLAS MUSYIMI MUTUA :::::::::::::::::::: APPELLANT
VERSUS**

REPUBLIC :::::::::::::::::::: RESPONDENT

Coram: J. W. Mwera J.

Appellant not wishing to be present

Orinda State Counsel for Respondent

C.C. Muli

JUDGEMENT

The appellant pleaded guilty to possessing bhang C/s 3(1) as read with S.3(2) (a) of the Narcotic Drugs Act No.4/94. That this was on 14.9.2000 at Miu Market, Machakos which bhang was not in medical preparation.

The facts reproduced showed that 70 rolls of bhang were found in the rented room used by the appellant. It was not in medicinal preparation. His appeal was on sentence.

In this otherwise regularly taken plea of guilty the appellant was treated as a first offender. In mitigation he told the Learned Trial Magistrate that he sold bhang but he did not know that that was bad (illegal?) The Learned Trial Magistrate required a probation report but it turned out to be unfavourable. Apparently the appellant had said in mitigation that his mother had left small kids in his custody and care which was not true. He got 10 years imprisonment.

The Learned State Counsel observed that the sentence was on the higher side. The conviction was not faulted. This court is of the view that the sentence though lawful and the appellant, a first offender told lies to the Learned Trial Magistrate as to his family responsibilities, still it is on the higher side. Interests of justice shall still be served if and that sentence is set aside and substituted with one of five (5) year. Save for the reduction of the sentence, this appeal is dismissed.

Judgement accordingly.
Delivered on 25th June 2001.
J. W. MWERA
JUDGE