

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.394 OF 1999

(FROM original Conviction and Sentence in Criminal Case No.479 of 1999 of the Senior Principal Magistrate's Court at Malindi –P.M. Mutani, SRM)

JUMA SHABAN NDEMA APPELLANT

- versus -

REPUBLIC RESPONDENT

J U D G E M E N T

Appellant was convicted of being in possession of Narcotic Drugs Contrary to S.3 of Drugs and Psychotropic Substances (Control) Act No.4 of 1994. He was sentenced to 2 years imprisonment together with another accused. Other 2 convicts were placed under probation. He now appeals against sentence having abandoned his appeal against conviction. The State opposes the appeal saying 2 years as against 10 years maximum is lenient.

I have considered the circumstances considered by the Learned Magistrate in giving this sentence. The fact that there were middle men selling drugs to some available foreign consumers luring people like appellant into the trade. I know also that the appeal court can only interfere with trial court's discretion in sentence where it is based on wrong principle or is manifestly excessive or manifestly low as to be a breach of principle.

I believe that failure of the Learned Magistrate to have considered his background was a wrong exercise of that discretion on her part. I believe I can alter this sentence by reducing the sentence to the period already served by the appellant and discharge him from prison forthwith unless otherwise lawfully held.

Dated this 6th Day of September, 2000.

A.I. HAYANGA

JUDGE