



REPUBLIC OF KENYA



**Mwinzi v Republic (Criminal Appeal E037 of 2022)
[2024] KEHC 262 (KLR) (11 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E037 OF 2022
GMA DULU, J
JANUARY 11, 2024**

BETWEEN

MAKAU NGUMI MWINZI APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Criminal Case No. 140 of 2021 delivered
on 28th July 2021 at Kilungu Law Courts by Hon. E. M. Muiru (PM))*

JUDGMENT

1. The appellant was charged in the Magistrate's court with three (3) others for trafficking narcotic drugs contrary to Section 4(a) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) No. 4 of 1994.
2. The particulars of offence were that on 22nd April 2021 at Malili Town, Mukaa Sub County within Makueni County jointly trafficked in narcotic drugs namely 10 stones of cannabis sativa, 1933 rolls of cannabis sativa, 5kgs unpacked cannabis sativa all valued Kshs. 69,660/= which was not medically prepared.
3. All the four (4) accused persons initially pleaded not guilty. Before trial however the appellant pleaded guilty to the charge, was convicted and sentenced to seven (7) years imprisonment.
4. His three (3) co-accused persons were tried, and convicted after full trial and sentenced to pay a fine of Kshs. 50,000/= and in default one (1) year imprisonment.
5. Dissatisfied with the sentence imposed on him, the appellant has filed the present appeal on the following grounds:-
 1. That the sentence is too harsh.
 2. That he is a family man and sole bread winner in his family.



3. That he is an old man of the age of 68 years and sickly.
6. The appeal was canvassed through written submissions, and in this regard I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions. The Director of Public Prosecutions opposes the appeal against sentence.
7. Having considered the facts and circumstances of this case, in my view the sentence imposed was merited and is sustainable.
8. The first reason is that the sentence is lawful as the statutory sentence for the offence is provided for under Section 4(a) of the [Narcotic Drugs Act](#) as follows:-
 - a. “Any person who traffics in any narcotic drugs or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable-
 - a. In respect of a narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is greater, and in addition to imprisonment for life.”
9. Thus in my view, both the fine and default prison sentence imposed were within the law.
10. Secondly, sentencing is an exercise of discretionary power by a trial court, based on the facts and circumstances of the offence and the mitigation factors disclosed to the trial court – see [SKM v Republic](#) (2021) eKLR.
11. In the present case, the offence was committed in the appellant’s premises, and the trial Magistrate noted that he was a repeat offender in the joint crime. He had a previous similar conviction in Criminal Case Number 71 of 2021 where he pleaded guilty and was fined Kshs. 300,000/= and in default three (3) years imprisonment. The appellant also informed the trial court in mitigation that he was sole bread winner, but the Magistrate noted that such crimes destroyed the future of people, especially the young people which observation by the trial court was reasonable. I will thus uphold the sentence.
12. Consequently, and for the above reasons, I find no merits in the appeal. I dismiss the appeal and uphold the sentence.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JANUARY 2024 VIRTUALLY AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Ms. Nusura – Court Assistant

Appellant

Ms. Omolo for DPP

