



**Mwakichwa v Republic (Criminal Appeal E026 of 2023)
[2024] KEHC 9541 (KLR) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E026 OF 2023
GMA DULU, J
JULY 10, 2024**

BETWEEN

ELIAS MWAKINA MWAKICHWA APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Criminal Case No. E111 of 2022 at
Wundanyi Law Courts delivered by Hon. D. Wangeci (PM) on 21st July 2022)*

JUDGMENT

1. The appellant was convicted on his own plea of guilty to two counts in a case where the third charge, count I was later withdrawn.
2. He was convicted firstly of cultivation of prohibited plant contrary to Section 6(a) of the [Narcotic Drugs & Psychotropic Substances Act](#) No. 4 of 1994 whose particulars were that on 12th March 2022 at around 2030 hours at Mwamale village in Wumingu Location within Taita Taveta County was found to have cultivated narcotic drugs to wit 20(twenty) plants of cannabis sativa in contravention of the said Act.
3. He was also convicted on his own plea for possession of cannabis sativa contrary to Section 3(1) as read with Section 3(2) of the [Narcotic Drugs and Psychotropic Substances Act](#), the particulars of which being that on the same date, time and place was found in possession of cannabis sativa (bhang) to wit 72 grams with a street value of Kshs. 3,000/=
4. On conviction, he was sentenced to ten (10) years imprisonment on count I (should be count II) and ten (10) years imprisonment on count III; sentences to run concurrently.
5. He has now come to this court on appeal on sentence only.



6. The appeal was canvassed through written submissions, in which I note that the Director of Public Prosecutions submitted that the maximum statutory sentence for count II (should be count III) was 5 years imprisonment.
7. On my part, having considered that the appellant pleaded guilty to the two charges and did not waste judicial time, and also the small quantity of the subject cannabis sativa involved, in my view the sentence meted out by the trial court for each of the two counts on which the appellant pleaded guilty and was convicted, was harsh and excessive.
8. I thus allow the appeal on sentence to the extent that I vary the sentence imposed and order as follows:-
 - i. I set aside the sentence of ten (10) years imprisonment for cultivating prohibited plant contrary to Section 6(a) of the *Narcotic Drugs and Psychotropic Substances Act*, and order that the appellant will instead serve two (2) years imprisonment for this count.
 - ii. I set aside the sentence of ten (10) years imprisonment for possession of cannabis sativa contrary to Section 3(2)(a) of the *Narcotic Drugs and Psychotropic Substances Act*, and order that instead the appellant will now serve twelve (12) months imprisonment for this count.
 - iii. The above sentences for the two counts will run concurrently, thus a total of two (2) years imprisonment from the date he was sentenced by the trial court.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF JULY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Appellant

Mr. Sirima for State

