



**Njue v Republic (Criminal Appeal E041 of 2023)
[2024] KEHC 10906 (KLR) (18 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL APPEAL E041 OF 2023
LM NJUGUNA, J
SEPTEMBER 18, 2024**

BETWEEN

BERNARD MWANGANGI NJUE APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising from the decision of Hon. Njoki Kibara (SPM) in the Magistrate's Court at Siakago Criminal Case No. E651 of 2023 delivered on 04th September 2023)

JUDGMENT

1. The appellant has filed a petition of appeal dated November 9, 2023 seeking that the appeal be allowed, conviction and sentence be aside and the appellant be set at liberty, on the grounds that the trial magistrate erred in law and facts:
 - a. By convicting the appellant without considering that the prosecution's evidence was inadequate to hold a conviction;
 - b. By convicting the appellant without considering that the prosecution's evidence was full of inconsistencies and was not corroborated, thus failing to comply with section 163(1) of the [Evidence Act](#);
 - c. By disregarding the appellant's defense and final submissions; and
 - d. By failing to consider the appellant's plea in mitigation and imposing a harsh sentence.
2. The appellant was charged with the offence of cultivation of prohibited plant contrary to section 6(a) of the [Narcotic Drugs and Psychotropic Substance Control Act](#) No. 4 of 1994. The particulars of the offence are that, on August 6, 2023 at Kombo Munyiri Sublocation in Mbeere South Sub-County within Mbeere County, the appellant was found cultivating a prohibited plant namely cannabis sativa to wit 330 plants.



3. The appellant was arraigned in court and when the facts were read out to him, he pleaded guilty to the charge and the plea was duly entered. He was convicted on his guilty plea and in mitigation, he stated that he had planted the crop for his own consumption. He pleaded for leniency. The trial court sentenced him to 5 years imprisonment, taking into account the time he had spent in custody according to section 333(2) of the [Criminal Procedure Code](#).
4. The court directed the parties to file their written submissions in the appeal but only the respondent complied.
5. In its submission, the respondent relied on section 207(1)&(2) of the [Criminal Procedure Code](#) and the cases of [Wamalwa v. Republic](#) (2022) eKLR and [Adan v. Republic](#) (1973) eKLR. It was its submission that where a person is convicted on an unequivocal guilty plea, no appeal shall lie on the conviction but on the sentence only. That in this case, the plea was taken in a language that the appellant understood and the facts were clear to him. It relied on the provisions of section 6(1) of the [Narcotic Drugs and Psychotropic Substance Control Act](#) No. 4 of 1994 which prescribes the sentence for persons convicted under that provision.
6. Further reliance was placed on the case of [Shadrack Kipkoech Kogo v. Republic](#) Eldoret Criminal Appeal No.253 of 2003 where the court of appeal held that an appellate court should not displace the trial court's findings on sentence unless the same are based on wrong principles of law. It urged this court to uphold the findings of the trial court since the appellant has not given any basis to displace them.
7. The issue for determination is whether the sentence imposed by the trial court should be reviewed.
8. The first appellate court is required to reexamine the evidence at the trial and make its own independent findings (see the Court of Appeal case of [Okeno vs. Republic](#) [1972] EA 32). However, in this case, the appellant pleaded guilty and when the facts were read out to him on a different date, he maintained his guilty plea and so the court convicted him based on his own guilty plea. Therefore, in as much as the appellant challenges the 'prosecution's evidence' there is no evidence to reexamine here. Section 382 of the [Criminal Procedure Code](#) states:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”
9. Section 6(a) of the [Narcotic Drugs and Psychotropic Substance Control Act](#) No. 4 of 1994 provides:

“Any person who—

 - (a) cultivates any prohibited plant; or
 - (b) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of the cultivation, gathering or production of any prohibited plant,

shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.”
10. There are several sentence options provided under the above cited provision, being fines and a maximum imprisonment sentence. During sentencing, the appellant said that he planted the crop for



his own consumption. Section 3 (2) (a) of *Narcotic Drugs and Psychotropic Substance Control Act* No. 4 of 1994 provides that in the case of cannabis, the appellant, having stated that he planted the crop for his own consumption only, is liable to a maximum imprisonment term of 10 years. It states:

“in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years.”

- 11. The trial court sentenced him to 5 years imprisonment, being a departure from the maximum statutory prescribed sentence for the offence herein. All factors considered, it is my view that the trial court correctly exercised its discretion during sentencing and considered the mitigation given by the appellant. therefore, there is no legal basis to review the sentence.
- 12. The appeal lacks merit and it is hereby dismissed.
- 13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF SEPTEMBER, 2024.

L. NJUGUNA

JUDGE

..... for the Appellant

..... for the Respondent

