



REPUBLIC OF KENYA



**Mukwana v Republic (Criminal Appeal E006 of 2023)  
[2024] KEHC 15854 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15854 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E006 OF 2023  
AC BETT, J  
DECEMBER 16, 2024**

**BETWEEN**

**VINCENT MUKWANA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a Petition of Appeal filed in this Honourable court on 2<sup>nd</sup> February 2023, the Appellant, while listing the grounds of appeal set out hereunder, urged the court to set aside the sentence of seven (7) years imprisonment and prayed for any other lenient and/or non-custodial sentence. The grounds of the appeal are as follows:-
  1. That I pleaded guilty to the said charges since had no knowledge on court process.
  2. That the sentence meted was very harsh under normal circumstances.
  3. That the trial court did not consider an option of fine or non custodial sentence.
  4. That I am a young parent and I have two children and wife who still needs my care considering tough economic times. I am a peasant farmer who lives hand to mouth hence seeking your leniency.
  5. That I am first offender.
  6. That I am very remorseful having committed the offence and seek for leniency from the Honourable court.
2. The background of the Petition is that on 20<sup>th</sup> January 2023, the Appellant pleaded guilty to a charge of being in possession of cannabis sativa (bhang) contrary to Section 3(1) as read with Section 3(2) (4) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 3 of 1994. The facts of the case were



that on the 19<sup>th</sup> January 2023 at Khayega Market in Kakamega, the Appellant was found in possession of 58 brooms weighing ten (10) kilograms of cannabis sativa (bhang). In pleading guilty to the charges, the Appellant state that he was found with 58 brooms but it was not valued at Ksh. 300,000/= as stated.

3. In mitigation, the Appellant asked for forgiveness and said that he sells cannabis to make a living and the trial court proceeded to impose the seven (7) year sentence on the ground that the Appellant though a first offender, deserved a harsh sentence for contributing to the consumption of drugs by young people thereby robbing our country of the future generation.
4. It is the seven (7) year sentence that set the ground for this Petition which was canvassed by way of written submissions.
5. The Appellant submits that the sentence was too harsh on him. He states that he has learnt a big lesson and is now reformed. He begs for leniency. He further submits that he is already rehabilitated and deterred by virtue of his imprisonment and is willing to change his behaviour and control his association. Additionally, he submits that his family is suffering as he was the sole breadwinner. He further submits that he has been of good conduct while in prison and is ready to be a law abiding citizen.
6. The Respondent faults the plea taking process terming it as equivocal on the basis that when called upon to plead, the Appellant stated:-

“I was found with 58 brooms but it was not valued at Kshs. 300,000/=.”

The Respondent goes on to state that when the facts were read to the Accused, his answer was also not unequivocal as he stated “the facts are on court”.

7. I have perused the proceedings. When the charge was first read to the Appellant, he narrated that he was found with 58 brooms but disputed the value assigned to it. To me, the Appellant was conversant with the language being used, including the trade or street language used in reference to the quantity of the cannabis and he pleaded to the charge of being found in possession thereof in a clear manner that was unequivocal albeit while pre-empting the prosecution’s case since the court was yet to read and explain the particulars of the offence to him.
8. Upon the particulars of the offence being read over and explained to the Appellant, he stated as follows, “facts are correct”. Those are the words in the original record and so the words “Facts on court” in the typed proceedings are misleading and appear to be as a result of the typist being unable to decipher the trial Magistrate’s handwriting.
9. The court is of the considered opinion that the Appellant understood the charges and the particulars thereof and although he stated “Facts as correct” in response to the request to state whether the particulars of the offence was correct, the fact that he had already acceded to being found with 58 brooms but disputing the value assigned to it was a confirmation that he understood the particulars of the offence and was fully aware to what he was pleading guilty to. The court is therefore persuaded that the plea of guilty met the test laid down in the case of *Adan -vs- Republic* [1973] EA 445.
10. I therefore find that the plea was unequivocal and the conviction safe.
11. I direct that a sentence review report be filed within fourteen (14) days to assist the court in determining whether or not to review the sentence.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16<sup>TH</sup> DAY OF DECEMBER 2024.**

**A. C. BETT**

**JUDGE**



In the presence of:

The Appellant

Ms. Chala for the Prosecution/Respondent

Court Assistant: Polycap

