REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL APPEAL NO. 33 OF 2017

RADHIA GHAMAHARO RASHID.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment of the learned trial Magistrate

Hon. J.M. Macharia (P.M) In Garsen Criminal Case Number 115 of 2015

delivered on 28th September 2017)

Coram: Hon. Justice Nyakundi

Mr. Mwangi Kamanu for State

Mr. Gekanana for Appellant

JUDGEMENT

Background

The Appellant herein were charged with the offence of **being in possession of narcotic drugs** contrary to section 3(1) as read with section 3(2) of the Narcotic and Psychotropic Substance Control Act No.4 of 1994 (NPSA).

The particulars of the offence were that on 29.05.2016 at Garsen Bus Stop in Tana Delta Sub County, Tana River County the Appellant was found in possession of 32 stones weighing 40kgs (bhang) of cannabis sativa (bhang) with a street value of Kshs. 600,000.00/- which was not in the form of medical preparation in contravention of the said Act. She was charged on 20.05.2016 and granted bail of Kshs.1, 000,000.00 which she secured.

Evidence at Trial

At trial the prosecution called a total of 3 witnesses in support of their case while the accused person gave an unsworn statement and did not call any witnesses.

PW1, Mohammed Hussein, the bus conductor for T-Coach No. KCF 031J, testified that on 29.05.16 at around 7.30am at Malindi getting ready to go to Garsen, he had 6 passengers going to various destinations. The appellant had luggage which he placed in the boot of the bus, it was the only luggage there as the other passengers had only their bags. He testified that the Appellant had two sisal bags, a mattress and a bed and was going to Hola. She paid 1600/- as bus fare and was given a receipt dated 29.05.2016. The **Receipt** was produced as **Exhibit number 1** which also included the list of her luggage kept in the boot. The two luggage were also produced as **exhibit 2 for the 50kg sack** and **3** for the **90kgs sack**. They then left for Garsen but were stopped at Minjila roadblock but the police didn't notice anything. At Garsen the Appellant asked him to drop her together with the sacks at Garsen but that her sister will pick the mattress and bed at Hola which they did. They later dropped the bed and mattress at Hola booking office and then went to Garsen then later proceeded to Mombasa. However, at Malindi he was stopped by the Police and informed that he was wanted at the Police station. On arrival at the police station he was shown the receipt that had been issued to the Appellant and asked whether he recognised it and was informed that the two sacks had contained some illegal substance. He recorded a statement and identified the accused person. He testified that they rarely checked the content of luggage but recalled he was the one who removed the luggage for her at the end of her trip. He stated that he had no grudge with the accused and that she was indeed the one on the dock.

On cross-examination he testified that he knew the luggage was the accused's as he was the one who dealt with it. He confirmed that he had packed the two bags in Malindi and they didn't raise any suspicion and that the accused was the one who asked to be dropped in Garsen.

On re-examination he confirmed that there were indeed two sacks a bed and mattress before the court and that there were no clothes. He also confirmed that the accused alighted at Garsen and that he was not there during the arrest.

PW2, Senior Sgt, Solomon Mwangi, attached at Garsen Police Station and the Arresting Officer (A.O), testified that on 29.05.2016 at 11.30am while at work, he received a phone call from an informant that there was luggage dropped at Garsen which was suspicious and that there owner of the luggage was a lady sited at Jibil shop waiting for a boda boda. He then proceeded to the scene and found the accused wearing black clothes with the two sacks beside her as described and he heard the accused making a phone call saying that the police were around and they had been informed. He introduced himself and asked the accused if the sacks were hers to which she replied that's he was waiting for a person to come and pick them up. He then opened the sacks and found rolled plant material that he suspected to be bhang. He then asked the accused to accompany him to the police station together with the sacks. The accused informed him that the other luggage had gone to Hola with the bus. He pointed out the two sacks before the court as well as the bus ticket that he recovered from the accused. He pointed out the accused as the woman with the sacks and the person he had arrested.

On cross-examination he stated that he had arrested the accused at Jibil shop while she was calling someone as she guarded the two sacks beside her. He stated that the accused became very surprised upon noticing him and that he was in uniform.

On re-examination he confirmed that he recovered the two sacks from the accused.

PW3, P.C. Samuel Ochieng, the Investigating Officer (I.O), testified that on 29.05.2016 he was in the office when Senior Sergeant Mwangi came in with a police vehicle carrying two sacks he had recovered from the accused. The sacks contained bhang which had been wrapped in newspaper. He identified the sacks as MF 4 and 5. He received the accused person and wrote an inventory where the accused person signed, he produced it as MFI 5. An officer called Damaris searched the accused and recovered the bus ticket MFI 1. He testified that the accused admitted that the luggage was hers but that she had been cheated that it was normal luggage. He then filled an exhibit memo and sent it to the Government Chemist whose report (MFI 6) confirmed that the substance was bhang and produced the report as exhibit no. 7. He testified that the accused was arrested at Garsen Bus stop waiting for transport.

The accused testified that she was a business lady and has nothing to do with the said bhang.

The trial court found her guilty of being in possession of narcotic drugs and convicted her. The trial court sentenced her on possession of drugs to 7 years.

The Appeal

Being aggrieved by the decision of the lower court the appellant filed a memorandum of appeal on 06.10.2017 and was released on bail but the same was withdrawn on 24.05.2019 and is currently in custody. She then filled amended grounds of appeal through Counsel Mr. Gekanana on 09.07.2019 on the following grounds that;

1. The Learned Trial Magistrate erred in law and in fact in proceeding with the trial and reaching a conviction on a charge that was defective.

2. The Learned Trial Magistrate erred in law and fact in finding that the offence charged had been proved.

3. The Learned Trial Magistrate erred in law and fact in convicting the appellant based on evidence of three prosecution witnesses which evidence was not adequate to sustain a conviction.

4. The Learned Trial Magistrate erred in law and fact in not finding that the items contained in the two (2) sacks carried in the bus were baobab seeds as stated by PW1.

5. The Learned Trial Magistrate erred in law and fact in not acquitting the Appellant as:

a) The receipt produced did not have the appellant's name and

b) No identification parade was conducted by the police to properly identify the Appellant as the person who boarded the bus a day earlier.

6. The Learned Trial Magistrate erred in law and fact in convicting the Appellant without a valuation report having been produced in the court by a valuation officer.

7. The Learned Trial Magistrate erred in law and fact in convicting the Appellant based on evidence which was contradictory.

8. The Learned Trial Magistrate erred in law and fact in not finding that the prosecution had not proved its case beyond any reasonable doubt.

9. The Learned Trial Magistrate erred in law and fact in not finding doubt in the prosecution's evidence and in not giving

the Appellant the benefit of doubt.

10. The Learned Trial Magistrate erred in law and fact in treating the Appellant's defence perfunctionarily by not ensuring that the Appellant's two witnesses' were called to testify.

11. The sentence of 7 years was manifestly excessive and no reason was given for its position.

For reasons wherefore the appellant prayed that the appeal be allowed, the conviction quashed and sentence set aside.

APPELLANT'S SUBMISSIONS

In his undated submissions filed on **24.02.2020** the Appellant's counsel Mr. Gekanana in a nutshell urged that the evidence produced at trial was insufficient to sustain the charge as the appellant ought to have been in possession of the prohibited drugs at all particulars times of transit.

On ground one and two: Counsel also submitted that the appellant ought to have been in possession of the drugs throughout the transit period and that the prosecution should have proved that the appellant knew what she was carrying was narcotics and had exercised some degree of control over the narcotics. He argued that the appellant was not in possession of the drugs at the booking office in Malindi nor at the police road block in Minjila and had not resisted inspection of the two sisal bags that had baobab seeds throughout her journey and that had the bags contained illegal drugs she would have resisted PW2's inspection.

On grounds three and four: it was Counsel's submission that the evidence relied upon by the prosecution was circumstantial and hearsay and should have been inadmissible. He argued that PW1 testified that he had inspected the 2 sisal bags at boarding and they contained baobab seeds and further that at the Minjila roadblock the police had also inspected it and found nothing untoward. PW1 testified that he only learnt of the narcotics after the PW2 informed him and as such the trial court ought not to have relied on him to prove that the two bags contained bhang. He further submitted that the information PW2 gave was hearsay as he had received the call from an informer and as such cannot be relied upon. He further submitted that the confession as PW3 testified was inadmissible as per section 25 of the Evidence Act.

On ground five and six: It was counsel's submission that the trial court should have taken into account the value of the narcotic drugs into account but this did not happen as no valuation report was tendered by the prosecution at trial.

On ground seven, eight, nine and ten: Counsel submitted that the trial court erred by not giving the appellant's witnesses a chance to testify but the trial court compelled the appellant to testify and gave a judgment date there and then. The trial court failed to issue summons for the two witnesses in contravention of Article 50 (2) of the Constitution on the principles of fair hearing.

On ground eleven it was counsel's contention that the trial court had failed to precisely state the issues that it had opted to determine and the ratio decidendi. For these submissions counsel relied on the cases of; **Dalmas Omboko Ongaro v Republic [2016] eKLR, Benjamin Mwangi & Another v Republic [1984] eKLR, Republic v Geoffrey Kilonzo Makau [2019] eKLR, Mercy Awour v Republic [2018] eKLR, Robert Peter Kazawali v Republic [2018] eKLR, Republic v Edward Kamau Mburu & 2 Others [2016] eKLR, Mohamed Athman Abdi v Republic [2019] eKLR a**nd **Republic v Kelvin Kamau Gatora [2018] eKLR**.

RESPONDENT'S SUBMISSIONS

In his submissions dated 22.10.2020 and filed on an even date Mr. Kamanu Counsel for the Respondent opposed the appeal in its entirety.

On grounds one and two: He submitted that it wasn't in doubt that the appellant was in possession of the 2 sacks of bhang recovered. PW1 confirmed that he issued the appellant with a receipt for the two sacks and a bus ticket and the other two prosecution witnesses positively identified the accused as the same individual. PW3 had an inventory which was also produced before the trial court.

On grounds three and four: Counsel submitted that there was no way PW1, a civilian, could have known that the sacks contained illegal drugs he however did indeed see the contents of the sacks. He submitted that the true contents of the sacks were revealed by the Government chemist's report stating that the contents of the sacks were bhang and not baobab seeds. He further urged that there was no need to have called PW2's informant as his evidence would have had no value and the decision to call the informer lies with the prosecution. He submitted that the alleged confession raised by Counsel for the appellant is not on record as the Investigating officer stated that the appellant had revealed the sacks were hers but the trial court did not record that as a confession.

On ground 5 Counsel submitted that there was no need for an identification parade as the appellant had been arrested in possession of the cannabis. PW1 was only called to confirm that the appellant had indeed been a passenger in his vehicle and nothing more. Further he argued that PW1's evidence on identification was not needed to lead to the arrest of the Appellant.

On Ground 6 he submitted that there was no mention of the value of the cannabis from the record as such the provisions of section 86 of the NDPSA do not apply.

On grounds 7 to 10 Counsel submitted that the contention by the Appellant that the police manning the road block should have been called as witnesses and they would have exonerated her was invalid as the police officers never searched the vehicle ferrying the sacks. PW1 stated that they did not notice anything and therefore there was no contradiction by the prosecution witnesses.

Counsel concluded that the prosecution had discharged its burden of proof and the appellant once placed on her defence merely denied the offence and did not in any way challenge the prosecution's evidence. Furthermore, the appellant failed to mention the two witnesses she had

earlier stated she was going to call and what would have been their role in exonerating her.

On sentencing Counsel submitted that the appellant had already served two years in prison out of the seven but left the same to the court. He urged this court to uphold the trial court's conviction.

DETERMINATION

In determining this appeal, I am as a first appellate court minded of the duty to re-evaluate and analyze the evidence a fresh with a view of arriving at my own independent conclusion. (See **Okeno v Republic [1973] EA 32).** This is done bearing in mind the fact that this court did not have the benefit of seeing the witnesses and their demeanor in particular. I shall deal with all grounds together.

From a cursory look at the appeal at hand I find that there are only two issues for determination:

1. Whether the prosecution proved its case to the required standard of proof.

2. Whether the 7 years' sentence was harsh and excessive.

I will now proceed to evaluate and analyse the evidence on record. ***Whether the prosecution proved its case to the required standard of proof:***

The appellant was charged with being in possession of cannabis sativa (Bhang) contrary to Section 3 (1) as read with Section 3 (2) of the Narcotic Drugs and Psychotropic Substances Control Act No. 3 of 1994. Section 3 of the said Act provides as follows:

> ***"Penalty for possession of narcotic drugs, etc.***
>
> ***(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.***
>
> ***(2) A person guilty of an offence under subsection (1) shall be liable—***
>
> ***(a) 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; and……"***

The Penal Code, in its preamble is described as *"An Act of Parliament to establish a Code of Criminal Law."* In absence of any definition for term possession in the NDPSC Act, the Penal Code, being an Act of part to establish a Code of Criminal Law, is an important piece of legislation to fall by in order to assist in interpretation of this term. Section 4 defines "possession in the following terms:

> **"(a) be in possession of or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place whether belonging to or occupied by oneself or not for the use or benefit of oneself or of any other person."**

The First Schedule of the Act indeed refers to cannabis as (Indian Hemp) and cannabis resin (Resin of Indian Hemp). Further under the definition **section 2** cannabis is defined as:-

> ***Means the flowering or fruiting tops of the cannabis plant (excluding the seed and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they be designated."***

The oxford Dictionary defines bhang as, **"The leaves and flower top of cannabis, used as a narcotic."**

Further this court is entitled under **section 59 and 60** of the **Evidence Act Cap 80** to take judicial notice that cannabis is referred to in Kenyan local dialect as bhang.

Possession is defined in **section 2** of the Penal Code as:-

> ***(a) "Being in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself of any other person;"***

The **Black's Law Dictionary** defines possession as:-

> ***"The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object."***

From the evidence on record it is clear that the prosecution's witness's evidence on the recovery of narcotic bhang in the appellant's custody was unchallenged. The appellant in her defence did not deny that the 2 sacks were in her custody at the time of her arrest she even signed the inventory done by PW3. The prosecution, with that in mind, proved possession by the appellant of the recovered narcotics. They were

recovered in her person while she was waiting for transportation and there was no contrary evidence.

Section 74 A provides a strict regime to be followed when narcotic drugs are seized. Section 74A (1) provides that the seized narcotic drug intended to be used in evidence the police or medical officer should be weighed and take a sample "in the present of, where practicable" of the person intended to be charged, designated analyst, the advocate (if any) presenting the accused or analyst (if any) appointed by the accused. After the sample is analysed the sample is returned to the authorised police officer together with certificate certifying the same to be narcotic drug. Section 74A (4) provides that once the certificate is produced certifying the sample to be narcotic drug the narcotic drug the narcotic shall be destroyed. The authorized police officer is required to produce the sample and the analyst certificate at the trial. The same was done at trial and I see no reason to interfere with the trial court's finding on this aspect of the case. The appellant was in possession of the drugs and the same were weighed and analyzed and the report produced in court by the prosecution witness as exhibit.

Even though the appellant alleges that she might have been given the wrong luggage the evidence as pointed out above including the receipt issued by the bus company as well as PW1's testimony, creates a link between her and the seized drugs. The Appellant had the burden to account for her possession or explain how she came to be in the possession of the bhang but instead of explaining the possession she made a passing statement that she was a business woman and knew nothing about the bhang.

In **Malingi v. Republic, [1989] KLR 225**, where the Court of Appeal had this to say about the doctrine of recent possession:

> ***"By the application of the doctrine the burden shifts from the prosecution to the accused to explain his possession of the item complained about. He can only be asked to explain his possession after the prosecution has proved certain basic facts.."***

Further I stand guided by the court's decision in **Peter Kariuki Kibue v. Republic, (2001) eKLR** where the court dealt with a similar matter where the appellant was found in possession of recently stolen items and he failed to give a satisfactory explanation as to how he came by them. The court stated that:

> ***"The appellant was in law duty bound to offer a reasonable explanation as to how he came to be in possession of the items, otherwise than as the thief or guilty receiver. This is a rebuttable presumption of law based on the provisions of Section 119 of the Evidence Act"***

The appellant did not offer any explanation as to how she came to be in possession of the 2 sacks but intimated to PW3 that she had been told that the sack contained clothes. She never disclosed who gave her the sacks.

On the issue of identification, the court in **Wamunga v. Republic (1989) KLR 424** at 426 had this to say:

> ***"Where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction."***

It is for these reasons wherefore I find that the prosecution's case was indeed prove beyond reasonable doubt. As such I uphold the trial court's conviction for the charge of possession.

2. Whether the 7 years' sentence was harsh and excessive.

On the issue of sentencing an offender, the sentence meted out on an accused person must commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirely before settling for any given sentence**.**

The Court of Appeal in **Thomas Mwambu Wenyi v Republic (2017**) **eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira v State of Mahareshtra** at paragraph 70 - 71 where the court held the following on sentencing: -

"Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."

In **Francis Karioko Muruatetu & Another vs R (Supra)** the Supreme Court stated the following guidelines as mitigating factors in a re-hearing sentence for the conviction of a murder charge: -

(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender and

(h) any other factor that the court considers relevant.

These factors are also applicable in a re-sentencing for the offence of robbery with violence. The Judiciary Sentencing Policy Guidelines lists the objectives of sentencing at page 15 paragraph 4.1 as follows:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community's condemnation of the criminal conduct.

Having said that, I shall now turn to case law and precedence. The Privy Council in **Spence vs. The Queen; Hughes vs. the Queen (Spence & Hughes) (unreported, 2 April 2001) (Byron CJ)** was of the view that:

"In order to be exercised in a rational and non-arbitrary manner, the sentencing discretion should be guided by legislative or judicially-prescribed principles and standards, and should be subject to effective judicial review…"

Further in the case **R vs. Scott (2005) NSWCCA 152 Howie, Grove** and **Barr JJ** stated:

"There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed…One of the purposes of punishment is to ensure that an offender is adequately punished…a further purpose of punishment is to denounce the conduct of the offender."

The principles guiding interference with sentencing by the appellate Court were properly set out in **S v Malgas 2001 (1) SACR 469 (SCA)** at **para 12** where it was held that:

"A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court…However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate"

The Court of Appeal, on its part, in **Bernard Kimani Gacheru v Republic [2002] eKLR** restated that:

"It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist."

In **Mokela vs. The State (135/11) [2011] ZASCA 166**, the Supreme Court of South Africa held that:

"It is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly

imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served."

Further in the case of **Ogolla s/o Owuor vs. Republic, [1954] EACA 270**, the Court pronounced itself on this issue as follows:-

"The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors"

Shadrack Kipkoech Kogo - vs - R. Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated thus:-

"sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered. (See also Sayeka v R (1989 KLR 306)"

Section 333(2) of the Criminal Procedure Code provides that:

"(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody."

Section 382 of the Criminal Procedure Code Act provides for instances where finding or sentence are reversible by reason of error or omission in charge or other proceedings. It states that:

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

In the instant case the Appellant was sentenced to 7 years' imprisonment. In my considered opinion, the sentence meted out on the Appellant cannot be said to be harsh and excessive as it is within the law.

I consequently find that the trial court gave the appropriate sentence in the circumstances of the case however I take cognizance of the Appellant's mitigation herein is a mother and has been behind bars for approximately 4 years for the offence of possession which in my view is more than adequate. I have considered the sentence in light of the fact that the accused was a first offender and I believe she has served sufficient time for the offence.

I therefore allow the appeal to the extent that the sentence is reduced for time served. The appellant is released unless otherwise lawfully held.

It is so ordered.

Judgment delivered, dated and signed at Garsen this 4th day of March, 2021.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Mwangi for State

Appellant