

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO. E023 OF 2020

GERALD SHIKUKU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being appeals from the original sentence of Hon. Sagero in Makueni Chief Magistrate's Court CMCR Case No. E002 of 2020 pronounced on 7th September, 2020).

JUDGMENT

1. The appellant was charged with possession of cannabis sativa contrary to section 3(1) as read with section 3(2) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994. The particulars of the offence were that on 4th September 2020 at around 0238 hours at [Particulars Withheld] trading centre Mukuyuni Location – Makueni County was found in possession of bhang with a street value of Kshs.1000/= which was not in form of medical preparation.
2. He pleaded guilty to the charge and on conviction was sentenced to two (2) years in jail.
3. He has now come to this court on appeal on sentence alone.
4. In his oral submissions on appeal, the appellant has asked this court to reduce the sentence to that already served as he wanted to support his family.
5. The learned Assistant Director of Public Prosecutions Mr. Tanui left the matter to the discretion of the court.
6. I have perused the record of proceedings of the trial court. In mitigation, the appellant asked the trial court for a non-custodial sentence to care for his family. He also said that he could not work without using bhang.
7. The trial court on its part, considered the mitigation of the appellant and noted that the appellant was unlikely to reform as he had insisted that the bhang enabled him to work and thus sentenced him to serve two (2) years imprisonment.
8. The appellant has now almost served his prison sentence, as he was imprisoned on 7/9/2020 – more than one year ago. Being a family man, and having been recorded as a first offender, I am persuaded to reduce his prison sentence, but hasten to warn him to desist from the criminal habit; otherwise courts will in future not be lenient to him.
9. To conclude, I allow the appeal on sentence and order that the appellant's prison sentence be that already served to date. He will thus be released from prison forthwith unless otherwise lawfully held.

It is so ordered.

DELIVERED, SIGNED & DATED THIS 16TH DAY OF NOVEMBER, 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE