



**IN THE HIGH COURT OF KENYA AT KIAMBU**

**CORAM: D. S. MAJANJA**

**CIVIL APPEAL 8 OF 2019**

**BETWEEN**

**LEE NJOROGE NJOGU .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

*(Being an appeal from original conviction and sentence of Hon. G. Onsarigo dated 30<sup>th</sup> March 2017 in Kikuyu Magistrates Court Criminal Case No. 875 of 2015)*

**JUDGMENT**

1. At the hearing of this appeal, the appellant, **LEE NJOROGE NJOGU**, told the court that he was only contesting the sentence imposed by the trial court as it was harsh and excessive. He had been convicted of being in possession of 2kg and 26 rolls of *cannabis sativa* (bhang) contrary to **section 3(1) (2) (a)** of the *Narcotic Drugs and Psychotropic Substances Act, 1994* and sentenced to 7 years' imprisonment.

2. Although the court stated that the appellant was serving a previous sentence, the particulars of the same were not shown to the court. A conviction ought to be proved by providing the relevant records to show that the accused was convicted and sentenced and the accused should be given the opportunity to see the records and comment on them if necessary (see *Thathi v Republic NRB HCCRA No. 660 of 1982 [1983] eKLR*). I also adopt the sentiments of Lesiit J., in *Abdi Ahmed v Republic Meru HCCA No. 87 of 2010 (Unreported)* where she stated as follows;

*With due respect to the learned magistrate the way to receive a previous record of an accused person was not followed. In such a case the prosecution is required to adduce proof of previous conviction by producing a certificate from the Central Bureau of Criminal Records as proof of the conviction. In the bare minimum the prosecution could provide the case number and the court in which the accused person was convicted and if possible cause it to be availed to the court. In either case the court is expected to put the record to the accused person and require him to admit or deny the same. In the instant case neither a certificate of previous records nor a conviction nor the court and criminal case number in which the Appellant was convicted were given. The prosecution did not therefore establish that the Appellant was ever convicted of any offence prior to the one on record."*

3. Although in this case, the appellant admitted that he was serving another sentence. It is not clear from the record for what offence he was convicted and for how long he was imprisoned. This is the kind of information that is necessary to enable the court make an informed decision on the appropriate sentence to impose.

4. Consequently, I affirm the conviction but allow the appeal to the extent of sentence only which I reduce to **four (4) years imprisonment**.

**DATED and DELIVERED at KIAMBU this 7<sup>th</sup> DAY OF JANUARY 2020.**

**D. S. MAJANJA**

**JUDGE**

Appellant in person.

Mr Kasyoka, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.