



**REPUBLIC OF KENYA**

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

**HCCRA NO. 215 OF 2017**

**KAVATA KIOKO.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. **Kavata Kioko** the Appellant was charged and convicted of the offence of trafficking a narcotic drugs contrary to Section (4) (a) of the Narcotic drugs and Psychotropic Substances Control Act No. 4 of 1994.
2. The particulars having been that she was on 30<sup>th</sup> May, 2016 at Nyaani Village in Kithembe Location found in possession of 19 (nineteen) stones of cannabis sativa worth Kshs.100,000/=. The same had not been medically prepared.
3. Upon conviction, she was sentenced to four (4) years imprisonment with no option of a fine. She filed this appeal on the grounds that there wasn't sufficient evidence to warrant a conviction. She also contended that she had not been given sufficient time to put up a defence.
4. A summary of the evidence is that on 30<sup>th</sup> May, 2016 5:30 am police officers from Kilome police station were informed that the Appellant was in possession of cannabis sativa. Pw1, Pw2 Pw3 and other police officers went to the Appellant's house in Nyaani village. The O.C.S of the station was with them.
5. Upon searching the house, a sack of cannabis sativa which was in 19 stones was found under the Appellant's bed, and she was arrested. The stones of cannabis sativa, brown sack; black polythene bag was all produced as EXB 1a – c.
6. When placed on her defence, the Appellant exercised her right and elected to remain silent and offer no evidence nor call witnesses.
7. During the hearing of the appeal, the Appellant decided to abandon her appeal against conviction, and pursued the one against sentence only.
8. She told the court that she has served two (2) years out of the four (4) years imprisonment. She therefore requested the court to reduce the sentence for her. She claims to have learnt a lot while in prison and that she will not repeat the mistake she made.
9. The State through M/s Owenga conceded to the appeal against sentence saying the Appellant had served a substantive portion of the sentence, which was sufficient punishment.
10. As expected of a first appeal court, I have re-evaluated the evidence on record. I am satisfied that the conviction is safe.
11. On sentence, the Appellant was convicted and sentenced to serve four (4) years imprisonment without an option of a fine. The record shows that she was a first offender. **I find the sentence of four (4) years imprisonment with no option of a fine to have been harsh. To date she has served two (2) years, three (3) months and two (2) weeks of the sentence which is sufficient punishment.**
12. The learned prosecuting counsel is also of the view that the Appellant has served sufficient punishment. **I therefore confirm the conviction but allow the appeal against sentence. The sentence is set aside and substituted with the period already served. The Appellant shall be released unless otherwise lawfully held under a separate warrant.**

Orders accordingly.

**DELIVERED, SIGNED AND DATED THIS 7<sup>TH</sup> DAY OF MAY, 2019 IN OPEN COURT AT MAKUENI.**

.....

**H. I ONG'UDI**

**JUDGE**