

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO. 28 OF 2019

JANE WANJIRU WACUKA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Appeal from the conviction and sentence by Hon. E. Muiru Senior Resident Magistrate Kilungu Criminal Case No. 76 of 2019 on 23/03/2019)

JUDGMENT

1. **Jane Wanjiru Wacuka** the Appellant was charged with the offence of being in possession of cannabis sativa (bhang) contrary to Section 3 (1) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994.

The particulars being that on 31st day of January, 2019 at Sultan Hamud Township she was found in possession of 68 rolls of cannabis sativa (bhang) which was not in form of medicinal preparation. Its street value was Kshs.1,360/=.

2. The Appellant was first arraigned in court on 31st January, 2019 when the plea was taken after the charge had been read to her. She pleaded not guilty. On 19th February, 2019, she indicated that she wished to change plea, but the prosecution was not ready with facts. It was not until 22nd March, 2019 that the prosecution was ready for the change of plea. The charge was read to the Appellant and she admitted it. Facts were given and she confirmed they were correct. She was then convicted and sentenced to three (3) years imprisonment.

3. The record shows she was a first offender. In spite of this, she was not given an option of a fine.

4. Before passing sentence, the court must consider a number of factors. In this case, the Appellant was a first offender, a mother of children and the street value of the substance she was found with was **Kshs.1,360/= only**. It is obvious that the sentence meted out to her was too harsh. She could have benefited from an option of a fine or CSO having been a first offender.

5. The State through learned Counsel Mrs. Owenga has conceded to the appeal on the harshness of the sentence. The Appellant has been in prison for 2 ½ months which is sufficient punishment considering the value of the cannabis sativa (bhang) she had. **I therefore allow the appeal on sentence only. The sentence of three (3) years imprisonment is set aside and substituted with a sentence of the period already served.**

6. **She will be released unless otherwise lawfully held under a separate warrant.**

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 14TH DAY OF JUNE 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE