



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANGA**

**CRIMINAL APPEAL NO. 68 OF 2016**

**BETWEEN**

**SILVESTER NJOGA GACHINE.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

***(An appeal from the original and sentence in the Senior Resident Magistrate's Court***

***at Kandara Criminal case No. 437 of 2016 delivered by M. Kinyanjui (SRM) on 14<sup>th</sup> June, 2016).***

**JUDGEMENT**

1. The Appellant herein was charged with the offence of being in possession of narcotic drugs contrary to Section 3 (1)(2)(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of the 1994. The particulars of the offence were that on the 12<sup>th</sup> day of June, 2016 at Popular Bar at Kabati Township within Murang'a County was found in possession of bhang to wit 12 rolls of street value of Kshs,240/ which was not in medical prescription form.

2. The Appellant was convicted on his own plea of guilty and sentenced to serve 10 years imprisonment. Dissatisfied with the sentence he preferred the instant appeal. He offered mitigation in handwritten submissions filed on 4<sup>th</sup> September, 2019. He reaffirms that he committed the offence but prays for leniency on account that he was remorseful, was a first offender and had a family with school going children who relied on him as the bread winner.

3. In his oral submission, he added that since his imprisonment, he has trained in carpentry up to grade 1. He urged the court to release him because he would be engaged in building the Nation and his family in a gainful manner. His prayer to the court is that the sentence is set aside and a non-custodial sentence be imposed.

4. Learned State Counsel, Mr. Mutinda conceded to the appeal stating that the facts of the case were that the Appellant stored the bhang in his house not for sale but for personal consumption. Nevertheless, he urged the court to take judicial notice of the fact that drug abuse was rampant in Murang'a County.

5. The Appellant was charged under Section 3(1)(2)(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act. They read as under:

***“(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;”***

6. Under sub-section 2(a) it is clear that the 10 years imprisonment provided is not a mandatory sentence. The court may impose any other sentence it deems appropriate depending on the circumstances of the case and the mitigation the accused offers. In the instant case, the Appellant was in possession of the bhang for personal use. The amount of bhang was not too large as to attract the heave penalty imposed by the court. This is a case in which a non-custodial sentence would have serviced.

7. Having regard to the above, I note that the Appellant has pleaded remorse and promised to re-organize his life to build his family and the Nation. It is hoped that with his carpentry training he will feed for his family by lawful means and not sink back into drug abuse. Suffice it to state, he was convicted on 14<sup>th</sup> June, 2016 and as at date he has been in custody for more than three months. He has therefore served more than sufficient sentence.

8. I accordingly allow the appeal. I set aside the remainder of the sentence and order that the Appellant be forthwith set free unless otherwise lawfully held. It is so order.

**Dated and Delivered at Murang'a this 5<sup>th</sup> day of September, 2019.**

**G.W. NGENYE – MACHARIA**

**JUDGE**

**In the presence of:**

*1. Appellant in person*

*2. Mr. Mutinda Respondent.*