

REPUBLIC OF KENYA

AT THE HIGH COURT

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 154 OF 2019

DESTRIOUS KISIKWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein was the 1st Accused in Kibera Criminal Case No. 1614/2014. He was charged jointly with two others with the offence of being in possession of narcotic drugs contrary to **Section 3(1)** as read with **Section 22(a)** of the **Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994**. The particulars of the offence were that on the 22nd day of June 2018 at Thiong'o road in Kangemi within Nairobi County, were jointly found in possession of narcotic drugs namely cannabis sativa, to wit seven hundred and eleven (711) grams with a street value of Kshs. 5,333/= in contravention of he said Act.

2. After the trial, the Applicant and the 2nd Accused were convicted accordingly. The 3rd Accused absconded. The trial court called for the Probation Officers Reports, both were dated 3/8/2017. In the sentence, the Applicant was to serve 3 years imprisonment whilst the 2nd Accused was sentenced to 2 ½ years probation. Both Probation Officers Reports were favourable. It is not clear why the trial court applied varied sentences in the circumstances, which can only be concluded that other factors other than the law influenced the sentence.

3. Nevertheless, it is clear that the amount of bhang the Applicant was in possession of was only 711 grams worth Kshs. 5,333/=. This quantity ought not to have attracted such a hefty sentence.

4. Accordingly, I allow the application. I set aside the remainder of the sentence. I find that the period of 2 years and close to 4 months that the Applicant has been in custody is sufficient sentence. I order that he be forthwith set free unless otherwise lawfully held.

Dated and Delivered at Nairobi This 22nd October, 2019.

G.W.NGENYE-MACHARIA

JUDGE.

In the presence of:

1. Applicant in person
2. Momanyi for the Respondent.