

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 70 OF 2018

DAVID KINGORI MWITI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Sentence dated 15/03/2018 in Nanyuki CM Criminal Case No 1236 of 2016 – L Mutai, CM)

J U D G M E N T

1. The Appellant herein, **DAVID KING'ORI MWITI**, was convicted after trial, of ***unlawfully being in possession of narcotic drugs*** contrary to **section 3(2)** of the ***Narcotic Drugs & Psychotropic Substances (Control) Act, No 4 of 1994***. It was alleged in the particulars of the charge that on 22/10/2016 at ***Gathiuru Forest*** in Nyeri County he was found in possession of 40 stones of bhang, 22 rolls of cannabis and one bottle of cannabis seeds, all of which were not in medicinal preparation, in contravention of the Act. On 15/03/2018 he was sentenced to serve 2½ years imprisonment. He has appealed only against that sentence.

2. **Section 3(2) (a)** of the Act provides as follows:-

“(2) A person guilty of an offence under subsection (1) shall be liable -

(a) in respect to 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....”

Given the quantity of cannabis that the Appellant had in his possession, he was lucky in that the trial court appeared to take the view that it was for his own consumption. Otherwise, he would have gotten a much longer sentence.

3. The trial court exercised its discretion in sentencing very much in his favour, and he has no cause to complain against the relatively lenient sentence he got. In any event, I find no justifiable cause to interfere with that sentence.

4. The Appellant's appeal against sentence is hereby dismissed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 6TH DAY OF NOVEMBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 7TH DAY OF NOVEMBER 2019