



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CRIMINAL APPEAL NO. 127 OF 2015**

**LUCY WANJERI MWANGI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*[Appeal from the original sentence in Criminal Case No. 393 of 2014 at Kangema by J. O. Magori,  
Principal Magistrate, dated 8<sup>th</sup> December 2015]*

**JUDGMENT**

1. The appellant was found in possession of *narcotic drugs* contrary to section 3 (2) (a) of the Narcotic Drugs and Psychotropic Substances Act, No. 4 of 1994. She was sentenced to *seven years* imprisonment.
2. The particulars were that on 3<sup>rd</sup> October 2014 at Githunguri village within Murang'a County, she had *51 stones and 500 grammes* of *cannabis sativa* with a street value of Kshs 33,000 which was *not* in the form of a medical preparation.
3. The petition of appeal challenged *both* the conviction and sentence. However, on 6<sup>th</sup> June 2018, the appellant *abandoned* the appeal on *conviction*. She *only* challenges the *sentence*.
4. Her learned counsel, *Mr. Kirubi*, submitted that the sentence was punitive. He opined that the learned trial magistrate erred by finding that the appellant was a second offender. He drew my attention to the decision in Criminal Revision 13 of 2012, *Lucy Wanjeri Mwangi v Republic*. The conviction of the appellant in Criminal Case 42 of 2012 was quashed for illegality.
5. The appellant also pleaded for *leniency*. She is 61 and ailing from hypertension, diabetes and some dental problems. She is *remorseful* and has reformed in prison. I was informed that she has taken religion seriously and leads other convicts in prayer sessions.
6. In a synopsis, the entire appeal is a plea for *clemency*. Learned Prosecution Counsel *conceded* the appeal.
7. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroje v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
8. There is no contest that the appellant was found in possession of *51 stones and 500 grammes* of *cannabis* with a street value of Kshs 33,000. The *cannabis* was *not* in form of a medical preparation.

9. I thus find that the appellant was properly convicted of the offence. In any event, the appellant *no* longer challenges her conviction.

10. I will now turn to the appeal on *sentence*. Section 354 (3) of Criminal Procedure Code provides that at the hearing of an appeal-

*“The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may.....(ii) alter the finding, maintain the sentence, or with or without altering the finding reduce or increase the sentence; or..... ”*

11. In *Macharia v Republic* [2003] 2 E.A 559 the Court of Appeal had this to say on sentencing-

*“The Court would not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors. ...The sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thus not proper exercise of discretion in sentencing for the Court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence.”*

12. The learned trial Magistrate found that the appellant was a *second offender* having been convicted for a similar offence in *Criminal Case 42 of 2012*. That explains the lengthy sentence. The record placed before the lower court was misleading. On *2<sup>nd</sup> August 2012*, the High Court (Wakiaga J) in Criminal Revision 13 of 2012, *Lucy Wanjeri Mwangi v Republic*, quashed the appellant’s conviction for illegality. At the time of sentencing in the present matter on *8<sup>th</sup> December 2015*, the appellant remained a *first offender*.

13. The learned trial magistrate thus relied on *inaccurate* records in sentencing. I am alive that the offence is *grave*. The appellant had pleaded for leniency in the lower court. She is now 61 and ailing. She is a first offender and undertakes to keep to the straight and narrow.

14. The sentence is *set aside*. The appellant shall now serve *three years imprisonment*. For the avoidance of doubt, the new sentence shall take effect from *8<sup>th</sup> December 2015*, the date of the original conviction.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG’A this 12<sup>th</sup> day of June 2018**

**KANYI KIMONDO**

**JUDGE**

**Judgment read in open court in the presence of-**

The appellant.

Mr. Kirubi for the appellant.

Ms. Gichuru for the Republic.

Mr. Kiberenge and Ms. Dorcas, Court Clerks.