



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO. 18 OF 2017**

**ABEL KIRIRA KIIGE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[Appeal from the original sentence in Criminal Case No. 18 of 2017 at Kangema by D. M. Kivuti, Senior Resident Magistrate, dated 18<sup>th</sup> January 2017]**

**JUDGMENT**

1. The appellant pleaded guilty to *possession of narcotic drugs* contrary to section (2) (a) and 3 (1) of the Narcotic Drugs and Psychotropic Substances Act, No. 4 of 1994. He was sentenced to *seven years* imprisonment.
2. The particulars were that on 11<sup>th</sup> January 2017 at Kairo Sub-location, Mathioya Sub-county within Murang'a County, he had *27 rolls and 50 grams of cannabis* with a street value of Kshs 600 which was *not* in the form of a medical preparation.
3. The petition of appeal challenged *both* the conviction and sentence. However, on 25<sup>th</sup> June 2018, the appellant *abandoned* the appeal on *conviction*. He *only* challenges the *sentence*.
4. The appellant pleaded for *leniency*. He said the sentence was too harsh. He also said that his children require parental care and support; that he suffers from a chest illness; and, that the prison is unable to supply him with his favourite diet of vegetables. He prayed for a non-custodial sentence.
5. Learned Prosecution Counsel *opposed* the appeal.
6. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
7. The charge was read and explained to the appellant in *Kiswahili*, a language in which he was conversant. He answered: *Ni kweli* (it is true). When the facts were read to him, he also answered in the *affirmative*. I thus find that his plea of guilt was *unequivocal*.
8. I have reached the conclusion that the appellant was properly convicted of the offence. In any event, the appellant *no* longer challenges his conviction.
9. I will now turn to the appeal on *sentence*. Section 354 (3) of Criminal Procedure Code empowers the High Court to "*maintain the sentence, or with or without altering the finding reduce or increase the sentence*".
10. 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."
11. The learned trial Magistrate found that the appellant was a *serial offender*. The appellant said in mitigation that he was ailing and had two children. He called for a probation report. The report was *unfavourable*. It set out in detail the previous convictions. The offence attracted a sentence of up to *ten years* imprisonment.
12. I cannot then say that the learned trial magistrate failed to look at the facts and circumstances of the case in their entirety before settling

for the sentence.

13. The appeal is devoid of merit. It is *dismissed*.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 3<sup>rd</sup> day of July 2018.**

**KANYI KIMONDO**

**JUDGE**

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

The appellant (in person)

Mr. Mutinda for the Republic.

Mr. Kiberenge and Ms. Dorcas, Court Clerks.