

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 108 OF 2015

(Appeal from original Conviction and Sentence in Kangema Criminal Case No 232 of 2015 – E M Kagoni, SRM)

JANE WACHERA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **Jane Wachera Mwangi**, was convicted after trial of ***being in possession of narcotic drugs*** contrary to **section 3(1) as read with section 2(a)** of the ***Narcotic Drugs and Psychotropic Substances (Control) Act, No 4 of 1994***. She was sentenced to serve 5 years imprisonment. She has appealed against both conviction and sentence. On 15/04/2016 the Appellant was admitted to bail pending disposal of her appeal.

2. The conviction is challenged upon the ground that there was not sufficient evidence to justify the conviction. The sentence is challenged upon the ground that it was manifestly harsh and excessive.

3. The ***Director of Public Prosecutions*** does not support the conviction and has so informed the court both orally in court (on 29/02/2016 at the hearing of the bail application) and in writing by letter dated 02/02/2017 (filed on 16/02/2017).

4. I have perused the record of the trial court. The police searched the Appellant's house and did not find anything incriminating. The drugs in question were subsequently recovered in a coffee plantation. It was not alleged that the plantation belonged to the Appellant, or that she had placed the drugs there. Possession, actual or constructive, was thus not proved. The fact that the Appellant attempted to run away may have raised suspicion in the eyes of the police officers; but suspicion alone is not evidence.

5. I am not satisfied that the Appellant's conviction can be supported. I will in the event **summarily** allow this appeal under **section 352A** of the ***Criminal Procedure Code***. The Appellant's conviction is hereby quashed and the sentence passed against her set aside. She is hereby discharged from her cognizance. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 9TH DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANGA THIS 10TH DAY OF MARCH 2017