



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
CRIMINAL APPEAL NO. 168 OF 2016
(BEING IN POSSESSION OF NARCOTIC DRUG)
(CORAM: J.A. MAKAU – J.)

MARK OUKO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against conviction and the sentence dated 23.02.2016 in Criminal Case No. 37 of 2016 in Ukwala Law Court before Hon. R.M. Oanda - S.R.M.)

J U D G M E N T

1. The Appellant **MARK OUKO** faced a charge of being in possession of narcotic drug contrary to **Section 3(1) as read with Section 3(2) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994**. The particulars of the charge are that on the 25th January 2016 at Yenga sub-location, Ugenya Sub County within Siaya County, was found in possession of Narcotic drug with two brooms (200pcs).
2. That at the time of plea taking, the charge was read and explained to the appellant in *Dholuo* language which he understands and which charge he admitted it was true. That upon the facts being read and explained, the appellant admitted, the facts were true, he was consequently convicted on his own plea of guilty and sentenced to serve 10 years imprisonment.
3. Aggrieved by the sentence, the appellant preferred this appeal setting out the following mitigating grounds: -
 - a) *That the sentence imposed was harsh and excessive.*
 - b) *That the Appellant is aged with young children who solidly depend on him for daily needs.*
 - c) *That the Appellant is a first offender and he begs leave of the Honourable Court to set him for a non-custodial sentence.*
4. At the hearing of the appeal, the appellant stated that he was found with two pieces of bhang which was for his use. He urged the sentence meted against him is harsh.
5. M/S Odumba, Learned State Counsel urged the sentence meted against the appellant was lawful,

however on the reduction of the sentence, she urged that is a matter for the discretion of the court.

6. Section 3(1) as read with Section 3(2) A of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 provides as follows: -

“3. Penalty for possession of narcotic drugs, etc.

(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.

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

(a) in respect of 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.”

7. The Appellant was found in possession of narcotic drug to wit two brooms (200 pieces) which as per report of Government Analyst dated 1st February 2016, exhibit P2B was confirmed to be *cannabis* which is included in the first schedule of the **Narcotic Drugs and Psychotropic Substances (Control) Act 1994**. The two brooms were produced as exhibit-1. I have considered the amount of *cannabis sativa* produced, being two brooms (200 pieces), that the appellant is a first offender and aged 50 years, that he needs rehabilitation and that as per Probation Officer’s Report, non-custodial sentence is not favourable as he cannot reason properly due to over use of the drugs, that he has no proper place of abode and that he can change if kept far away from the *bhanga*. In view of the above, I find the appellant would benefit if he is held in prison for some time instead of being placed under non-custodial sentence.

8. The upshot is that the conviction is upheld, the sentence of ten (10) years imprisonment set aside and substituted with three (3) years imprisonment. The sentence to run from the date of imprisonment thus 23rd February 2016.

DATED AND SIGNED AT SIAYA THIS 5TH DAY OF APRIL 2017.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

In the presence of:

Court Assistants:

1. George Ngayo

2. Patience B. Ochieng

3. Sarah Ooro

Appellant: in person, present

M/S Odumba: for State

J.A. MAKAU

JUDGE