

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL No. 258 OF 2015

JOSEPH NDUNGU WAWERU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the Sentence of the Chief Magistrate's Court at Nakuru. Hon. W. Juma – Chief Magistrate delivered on the 19th April, 2011 in CR Case No. 1372 of 2011)

RULING

The appellant herein **JOSEPH NDUNGU WAWERU** has filed this appeal seeking a review of his sentence. The appellant does not challenge his conviction. He pleaded guilty at the trial. The appellant was sentenced to serve ten (10) years imprisonment which he terms harsh and excessive. **MR. CHIGITI** learned State Counsel does not oppose this appeal against sentence.

The appellant was found in possession of 23 rolls of bhang. This was likely for his own personal consumption. The learned trial magistrate imposed the maximum sentence of ten (10) years imprisonment. Given that the appellant was a first offender it is my view that the trial magistrate ought to have considered imposing an alternative sentence.

Taking all factors into account I feel that the maximum sentence was not warranted. I therefore allow this appeal against sentence. I set aside the ten (10) years term imposed by the trial court. In its place I substitute a fine of Ksh 20,000/= in default to serve three (3) years imprisonment. The sentence to run from the time of conviction in the trial court.

Dated in Nakuru this 6th day of September, 2016.

Maureen Odera

Judge

6/9/2016