



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 106 OF 2015**

**ISSAC MOMANYI NYAKUNDI .....1<sup>ST</sup> APPELLANT**

**PETER ANYANGO ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Appeal from the Sentence of the Chief Magistrate's Court at Molo, Hon. H. M. Nyaga– Chief Magistrate delivered on the 13<sup>th</sup> April 2015 in CMCR Case No. 966 of 2015)*

**JUDGEMENT**

The two accused persons **ISSAC MOMANYI NYAKUNDI** (hereinafter referred to as the 1<sup>st</sup> Appellant) and **PETER ANYANGO** (herein after referred to as the 2<sup>nd</sup> Appellant), both faced two (2) counts of **BREAKING INTO A BUILDING AND COMMITTING A FELONY CONTRARY TO SECTION 306(a) PENAL CODE**. In addition the 2<sup>nd</sup> appellant faced a charge of **BEING IN POSSESSION OF CANNABIS SATIVA**. The appellants both pleaded '**Guilty**' to the charges. Each was convicted on their own plea of Guilty and sentences to serve four (4) years on Count No. 1, three (3) years on Count Nos 2, and 3. The 1<sup>st</sup> appellant was sentenced to 1 year imprisonment on Count No. 4 and the 2<sup>nd</sup> appellant was sentenced to serve 1 year on Count No. 4.

At the hearing of their appeals the appellants both indicated that they do not seek to challenge the convictions. They each only seek to appeal against their sentences.

**MS OUNDO** learned State Counsel conceded the appeal only in respect to the 2<sup>nd</sup> appellant on Count No. 3. As she rightly pointed out that conviction was erroneous as no report was availed in the lower court to prove that the plant material recovered on the 2<sup>nd</sup> appellant was in fact *Cannabis Sativa*. I therefore allow the appeal of the 2<sup>nd</sup> appellant and set aside his sentence on Count No. 3.

Regarding the remaining sentences counsel opposed the appeal. I have looked at the charges. I note that the Burglary incidents all occurred on the same date. The appellants both pleaded guilty thus doing away with the need for a lengthy trial. I therefore allow their appeal against sentence and I direct that the sentences imposed by the lower court being lawful are hereby upheld **but** those sentences will be served **concurrently**. It is so ordered.

**Dated in Nakuru this 7<sup>th</sup> day of November, 2016.**

Both appellants present in person.

**Maureen A. Odero**

**Judge**

**7/11/2016**