



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL REVISION NO. 8 OF 2016**

*(From original conviction and sentence in criminal case No. 254 of 2014 of the PM's court at Wajir- E. C. Cheron - SPM).*

**MOHAMED NASIR SAID ..... 1<sup>ST</sup> CONVICT/OFFENDER**

**SHUKRI MOHAMED ABDLLAHI ..... 2<sup>ND</sup> CONVICT/OFFENDER**

**ABDIRAHIM MOHAMED OLOW ..... 3<sup>RD</sup> CONVICT/OFFENDER**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**RULING**

In this matter, Mohamed Nasir Said, Shukri Mohamed Abdllahi, and Abdirahim Mohamed Alow were charged in the Magistrate's court at Wajir with being in possession of narcotic drugs contrary to section 3(1)(a) as read with 3(2) of the Narcotic Drugs and Psychotropic Substances Control Act of 1994. The particulars of the offence were that on 16<sup>th</sup> July 2014 at Wajir Town within Wajir East District, Wajir

County were found in possession of 250 grams and 63 rolls of bhang valued at Kshs 10,000/- which was not medically prepared.

They were recorded as having pleaded guilty to the charge. The three of them were then convicted and each ordered to serve 1 year imprisonment. The cannabis sativa was ordered to be destroyed. After conviction and sentence, Abdirahim Mohamed Alow said that he was turning 18 years that year of 2014. The court thus recorded that the convicts were minors and referred them to the Garissa High Court, and ordered each of them to be released on bond of Kshs 500,000/- and surety of the same amount.

Though the trial court recorded that age assessment had shown that the convicts were minors, I do not see any document confirming assessment of the age of any of the three convicts.

Be that as it may, since the trial court was convinced that the convicts were minors in 2014 and put them on bond of Kshs 500,000/=, I have no reason to interfere with that finding.

It is now in November 2016 more than 2 years after the decision of the trial court. The Children's Act 2001, allows this court to review the decision of the trial court under section 186 (f) of the Act which states as follows:-

***“186. Every child accused of having infringed any law shall -***

***(f) if found guilty, have the decisions and any measures imposed in consequence thereof reviewed by a higher court.”***

The offenders herein were initially each convicted and sentenced to serve 1 year imprisonment. Shortly thereafter, the trial court granted them bond of Kshs 500,000/= each on being convinced that they were children and forwarded the file to this court to consider reviewing the conviction and sentence.

Section 189 of the Children’s Act disallows the use of the word “**conviction**” and “**sentence**” with regard to children. It states as follows:-

***“189. The words “conviction” and “sentence” shall not be used in relation to a child dealt with by the children’s court and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including a reference to a person found guilty of an offence, a finding of guilty or an order upon such a finding, as the case may be.”***

Section 190(1) of the Children’s Act also prohibits imprisonment or placing in a detention camp of a child. Section 191 of the same Act provides for the manner in which a child should be dealt with where the court finds the child to be guilty.

In view of the above provisions of the Children’s Act and having concurred with the finding of the trial court that the three offenders were children, I hereby review the orders of the trial court, set aside the conviction and sentence imposed on each of the three by the trial court, and instead find each of the three guilty of the offence charged. I order that each of the three will pay a fine of Kshs 50,000/= and in default will render community service under the supervision of the Probation Officer at Wajir for a period of three (3) months each. It is so ordered.

The original trial court file is hereby returned to Wajir court to implement the above orders.

**Dated and delivered at Garissa this 8<sup>th</sup> day of November 2016.**

**GEORGE DULU**

**JUDGE**