



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 121 OF 2013**

**BETWEEN**

**PASCAL OYOO OGUTU..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Being appeal from the conviction and sentence of Hon. A.K. Mokeross Ag. SRM dated 17<sup>th</sup> June 2013 in the original Kilgoris Criminal Case No.428 of 2013.)***

**JUDGMENT**

1. The appellant PASCAL OYOO OGUTU was charged with the offence of being in possession of Narcotic drugs contrary to Section 3(1) as read with Section (2) (a) of **NARCOTIC AND PSYCHOTROPIC SUBSTANCES CONTRACT No. 4 of 1994** the particulars of which were that on 15<sup>th</sup> day of June 2012 at Kisumu Ndogo estate Kilgoris township in Transmara West District of Narok was found being in possession of cannabis sativa (bhanga) to wit 40 rolls of street value at Kshs.5,000/= in contravention of the said act.
2. He pleaded guilty to the said charges and was convicted on his own plea of guilt and sentenced to seven (7) years imprisonment.
3. Being aggrieved and dissatisfied with the sentence and with leave of this honourable court he filed this appeal against sentence on the ground that he was suffering from high blood pressure and was the bread winner to the rest of his family as his parents are suffering from HIV & AIDS.
4. Section 348 of C.P.C. states that an appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on his own plea by a subordinate court except to the extent or legality of the sentence.
5. The only issue therefore for determination in this appeal on sentence is whether the same was illegal and excessively high so as to be set aside by the appellant court.
6. It should be noted that under Section 3(2) (a) of the Narcotic Drugs and Psychotropic Substance Control Act under which the appellant was charged as person guilty of the offence is liable to imprisonment for twenty years.
7. Since the trial magistrate used his discretion and sentenced the appellant to seven (7) years I find no illegality with the said sentence and therefore find no merit with the appellant appeal herein which I hereby dismissed.
8. Now that the appellant appeal has been dismissed it is my considered view that the issues raised by the appellant in his grounds of appeal herein that is to say that he is the sole bread winner for his family are appropriate grounds to be considered in the revision exercise by the court at an appropriate time.

**Delivered, signed and dated at Kisii this 2<sup>nd</sup> day of July 2015.**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

**Mr. Mojale advocate for the state.**

**Appellant in person.**