



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 5 OF 2013

DOMINIC KYALO MUNYOKIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Makueni Criminal Case No. 26 of 2013 by Hon. Yator, AG SRM on 22/1/2012)

JUDGMENT

1. **Dominic Kyalo Munyoki**, was charged with two (2) counts;

Count 1- Trafficking Narcotic Drugs (bhang) contrary to **Section 4(a)** of the Narcotic Drug and Psychotropic Substance Control Act No. 4 of **1994**.

Count 2 – Possession of forged currency note contrary to **Section 359** of the **Penal Code**.

2. He was convicted on his own plea of guilty and sentenced as hereunder:-

Count 1 - **3 years** imprisonment

Count 2- **2 years** imprisonment

3. He now mitigates on sentence on the grounds that he has a wife and three (3) children who solely depend upon him.
4. The State opposed the application and called upon the court to uphold the sentence.
5. It behooves this court being the first appellate court to reconsider the trial court's record and come to its own conclusions.
6. This court can only interfere with the sentence imposed by the trial court if it is evident that the court acted upon some wrong principles or overlooked some material facts or if the sentence was manifestly harsh or excessive in the circumstances. (*see Wagunda versus Republic [1983] KLR 569*).
7. The penalty provided for the offence of Trafficking in Narcotic Drugs is a fine of One Million Shilling or three times the market value of the Narcotic Drug or Psychotropic Substance, whichever is the greater, and, in addition, to imprisonment for life.
8. With regard to **count 2**, a person being found in possession of forged currency is liable to imprisonment for **seven (7) years**.
9. The sentence imposed in respect of **count 2** was within the law. The sentence imposed in **count 1** was not within the law. However, the State having not sought enhancement, I find the appeal on sentence lacking merit. I therefore dismiss the appeal and confirm the sentence passed on in

respect of both counts.
10.It is ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 8TH day of OCTOBER 2014.

L.N. MUTENDE

JUDGE