REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 1143 of 2011

(From original conviction and sentence in Criminal Case No. 2125 of 2011 of the Chief Magistrate's Court at Nakuru, W. Juma (C. M.)

NICHOLAS NJUGUNA KARANJA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of being in possession of *cannabis sativa* contrary to section 3(1) as read together with section 3(2) (b) of the Narcotic and Psychotropic Substances Control Act No. 4 of 1994. The particulars were that on 16th June 2011 at Mau-Narok in Njoro District within Rift Valley Province, the Appellant was found in possession of 10 grammes of *Cannabis Sativa* (Bhang) valued at Kshs. 50/=. The Appellant pleaded guilty and was sentenced to 10 years imprisonment.

Aggrieved with his sentence, the Appellant came to this court on a Petition of Appeal filed on 1/2/2011 wherein he erroneously stated that he wished to appeal against the sentence passed for the offence of robbery with violence. The Appellant was charged and convicted of the offence of being in possession of *cannabis sativa* not robbery with violence. The grounds of appeal which amounted to no more than pleas of mitigation, are-

(1) that he was a first offender,

(2) that he is the sole provider for his wife and two children,

(3) that he is an orphan,

(4) that he is remourseful for the acts which he owns up and promises not to repeat the same again,

(5) that he pleaded not guilty to the charge and this ought to be taken into account.

Ms. Idagwa for the state submitted that sentencing is a matter of discretion of the trial court and the section under which the Appellant was sentenced provides that the offender shall be liable to imprisonment for up to 10 years. She further submitted that the bhang was not for sale.

I have considered the grounds of appeal. Sentencing is essentially at the discretion of the trial court.

An appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor, that it failed to take into account a relevant factor, it applied a wrong principle or that the sentence is harsh and excessive that an error in principle must be inferred. (*See* **Charo Ngumbao Gugudu V Republic [2011] eKLR**). The court also held that a maximum sentence should only be meted out to the worst offender under the particular section that the offender is charged.

The Appellant was a first offender and was found with 10 grammes of bhang worth Kshs. 50/=. He pleaded guilty before the trial commenced and he therefore did not waste court's time. In my humble view, the learned magistrate did not take into account the above relevant factors because had she done so, then she would have meted a more lenient sentence other than the maximum 10 years imprisonment. I find that the sentence of 10 years was excessive in the circumstances and it was not commensurate to the offence.

Consequently, I would allow the appeal on sentence. I would set aside the sentence of 10 years imprisonment imposed by the trial court and substitute it with 2 years imprisonment.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 10th day of May, 2013

M. J. ANYARA EMUKULE

JUDGE