



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 66 OF 2010**

JOSEPH NDOLO MAWEU..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 566 of 2010 of the Chief Magistrate's Court at Mombasa – **Hon. Kirui - PM**)

**JUDGMENT**

The Appellant herein was Convicted and Sentenced to ten (10) years imprisonment and in addition fined Ksh. 1 million or to serve two and half (2½) years imprisonment in default for the offence of trafficking in Narcotic drugs contrary to section 4(a) of the Narcotics drug and psychotropic substances Control Act No. 4 of 1994 as read with section 2 (a) of the same Act.

The Accused pleaded guilty to the charges and was Convicted on his own plea and Sentenced accordingly. A perusal of his submissions shows that his appeal is against Sentence. It is noted that he was Convicted for the offence of trafficking in Narcotic drugs contrary to section 4(a) of the Narcotic drugs and psychotropic substances Act No. 4 of 1994 as read with section 2(a) of the same Act.

Section 2 provides for interpretation. There is no section 2(a) in the act. Section 2(1) (a) is in regards to illicit traffic and defines illicit trafficking as (a) the cultivation of any coca bush or gathering any portion of a coca plant.

The appellant in this case is not charged with trafficking of cocaine but with Cannabis Sativa. He is not charged with cultivation or gathering but with storing Cannabis Sativa.

For all intents and purposes therefore, the charge is defective on material aspects and or particulars.

It is noted that he has already served more than three years imprisonment. There will be no need of ordering for a retrial.

The Conviction is hereby quashed and the Sentence set aside.

He is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **1st** day of **October, 2013**.

.....

**M. MUYA**

**JUDGE**

**1ST OCTOBER, 2013**

**In the presence of:-**

Learned State Counsel Mr. Ayodo for the state

The Appellant

Court clerk Mr. Musundi