

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE
CRIMINAL APPEAL NO. 747 OF 1997

**(From Original Conviction/Sentence and in Criminal Case No. 226
of 1997 of the Resident Magistrate's Court at Gatundu: J.L. Wanjohi Esq
PETER KABATHA KIARA.....APPELLANT**

Versus

REPUBLIC.....RESPONDENT

Coram: Osiemo J.

Appellant -NA (not wishing to be present)

Respondent -Mrs. Shikuku, State Counsel

Mr. Onduma -Court Clerk

JUDGEMENT

The appellant was convicted with an offence under Section 3 (1) of the Narcotic Drugs and Psychotropic Substances (control) Act No. 4 of 1994. He was sentenced to 3 years imprisonment. His appeal to this court is against sentence only. The appellant had pleaded guilty to the charge. Upon the charge being read to the appellant he replied "It is true". Then the prosecutor proceeded to state the facts and produced the 30 grammes of bhang. The record does not show that the said exhibit was forwarded to the government analyst to establish whether or not it was a drug. Without that evidence a conviction under section 3 (1) of the Narcotic Drugs cannot stand. The appeal is therefore allowed. Conviction is quashed and the sentence set aside.

I order that the appellant be set at liberty forthwith unless otherwise held for any other lawful cause.

Dated and delivered at Nairobi this 22nd day of May, 1998

J.L.A. OSIEMO

JUDGE