

REPUBLIC OF KENYA

Nzuki v Republic

High Court, at Mombasa May 11, 1992
Wambilyangah J

Criminal Appeal No. 7 of 1992

May 11, 1992, **Wambilyanga J** delivered the following Judgment.

The appellant Moses Francis Nzuki was convicted on the following counts:-

Count 1: Being in possession of cannabis sativa contrary to S. 10(e) of the Dangerous Drugs Cap. 245 of the Laws of Kenya.

Count 2: Being in possession of a firearm contrary to S. 4(1) of the Firearms Act as read with Firearms (Amendment) Act No. 8 of 1988.

He was sentenced to 1 year imprisonment on count No. 1 and 2 years imprisonment on count No. 2. The sentences were ordered to run concurrently. He appeals to this court against conviction and sentence.

There was clear and uncontradicted evidence to the effect that both, the charged quantity of cannabis sativa and the toy pistol were found in the house from which appellant emerged and fled away from the 2 Policemen who were approaching that house. It was also in the evidence of the prosecution that the Policemen searched the house immediately after the appellant had escaped from them. The crucial question which the learned trial magistrate gave adequate consideration is why should the appellant have been compelled to flee from the policemen if he was innocent of any crime. When this question is considered in relation to the credible evidence on the items which were recovered from the house, the guilty of the appellant on the charged offences becomes established beyond reasonable doubt. And more so, where the appellant himself never tried to put forward any defence to the charge. I have considered all the grounds of appeal in his memorandum but I remain satisfied that the magistrate's findings can not be faulted.

The sentences were eminently reasonable and should not be interfered with. In the result the appeal is dismissed in its entirety.