



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**

**AT NAIROBI**

**Criminal Appeal 36 & 57 of 2005**

**KENNEDY WANDIGA OSIKA .....1<sup>ST</sup> APPELLANT**

**JOSHUA OMAMO OGELO .....2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

*(Appeal from a sentence of the High Court of Kenya Nakuru (Mr. Justice L. Kimaru) dated 24<sup>th</sup> November, 2004 In H.C.C.RA. NO. 72 & 73 OF 2002)*

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**JUDGMENT OF THE COURT**

These two appellants pleaded guilty to the charge of being in possession of bhang contrary to *section 2(1)* as read with *section 3(1)* of the Narcotic and Psychotropic Substances Control Act, Act No. 4 of 1994. Upon their unequivocal admission of the charge, they were each sentenced to ten years imprisonment. They unsuccessfully appealed to the High Court and they now come here on a second appeal. Their appeal is that the sentence is too severe for them. Under the provisions of *section 361* of the Criminal Procedure Code, this Court has no jurisdiction to deal with the severity of a sentence. The Court can only interfere where the sentence is unlawful which is not the case here. The first appellant Kennedy Wandiga Osika is clearly right in abandoning his purported appeal. We order that the appeals be and are hereby dismissed.

*Dated and delivered at Nakuru this 24<sup>th</sup> day of September, 2007.*

**R. S. C. OMOLO**

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**JUDGE OF APPEAL**

**E. O. O’KUBASU**

.....

**JUDGE OF APPEAL**

**W. S. DEVERELL**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**