



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**  
**AT NYERI**

**(CORAM: SHAH, OWUOR & KEIWUA, JJ.A.)**  
**CRIMINAL APPEAL NO. 72 OF 1999**

**BETWEEN**

**JAMES KAMAU NDIRANGU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from a Judgment of the High Court of Kenya at Nyeri  
(Mr. Justice J.V.O. Juma) dated 4th May, 1999**

**in**

**H.C.CR.APPEAL NO. 312 OF 1997)**

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**JUDGMENT OF THE COURT**

The appellant was convicted of being in possession of Cannabis Sativa contrary to section 3(1)(2) of the Narcotic Drugs & Psychotropic Substance Act of 1994, and sentenced to seven years' imprisonment by District Magistrate 1, P.J.D. MwangHuilsu Efsiqrusitr ea.ppeal from this conviction and sentence was dismissed by the High Court, at Nyeri, on 4th May, 1999. In his home-made grounds of appeal as presented to the High Court the appellant put forward the grounds of appeal which we will summarize as follows:

1. That the trial magistrate occasioned a miscarriage of justice by basing a conviction on uncorroborated evidence of P.W.1 and P.W.2.
2. That the trial magistrate did not adjudicate on the contradictions in the evidence of P.W.1. and P.W.2. and cast the burden of proof on the appellant.
3. That the trial magistrate did not adjudicate on the fact that one of the arresting Administration Policeman was not called to give evidence.
4. The trial magistrate failed to consider properly the defence put forward by the appellant.

Whilst the appellant urges that he had wanted to be present at the hearing of the appeal in the High Court, the petition of appeal lodged by him in that court shows that he did not wish to be present at the hearing. If we were to go by the record it is clear that the appellant did not wish to be present at the hearing of the

appeal. However, for the purposes of this appeal before us, nothing will turn on that discrepancy.

When the appeal came up for hearing before the superior court (Juma, J.) the appellant was not present and the state counsel submitted as follows:

"Charge of being in possession of bhang. He had 20 rolls of bhang. Sentenced to 7 years. In mitigation he stated that he had 30 other cases."

The learned judge did not consider even cursorily the grounds of appeal propounded by the appellant. He said:-

"Having perused the record I am satisfied that the appellant was properly convicted. On sentence, I was inclined to lower the same but in view of the appellant's admission that he has 30 other cases, I will not interfere with the sentence."

It is a mandatory requirement of **section 169(1)** of the Criminal Procedure Code that every judgment shall (inter alia) contain the point or points for determination, the decision thereon and the reasons for the decision. See the case of R.V.

**PAULO LWEVOEA S/O MUPERE (1943) E.A.C.A. 63.** The then Court of Appeal for Eastern Africa said:- with regard to the judgment we should have liked a fuller judgment and we attract attention of the learned judge to section 163 of the Criminal Procedure Code

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**(Ugandan Section 168 of the Criminal Procedure Code was equivalent to present Section 169 of our Criminal Procedure Code.)**

We are not saying the first appellate court should re-write the judgment. We are saying that the first appellate court ought to examine the grounds of appeal before rejecting them. Such examination need not be lengthy but ought to set out the finding(s) on the grounds of appeal in a manner showing that it has considered them adequately.

Even if an appellant does not wish to be present at the hearing of his appeal the court is bound to properly consider his grounds of appeal and if the grounds be frivolous the court ought to say so.

The Principal State Counsel Mr. Oluoch conceded, and in our view rightly so, that the judgment of the superior court was sketchy. He added that it had caused a lot of disquiet. He urged, however, that there was enough material before us, to decide the appeal. That may be so but this Court on a second appeal cannot interfere with a sentence. It would therefore be proper and prudent, in our view, to remit the appeal to the superior court for a rehearing by another Judge who should consider the grounds of appeal as well as the severity of the sentence. We note that the records of convictions, if any, in the alleged 31 cases were not produced before that Court to check if those were relevant. For this reason it is not necessary for us to consider the appellant's other grounds of appeal.

We therefore allow this appeal. As the appellant wishes to be present at the re-hearing, the prison authorities must facilitate his attendance in Court for the rehearing of the appeal. These are our orders.

**Dated and delivered at Nyeri this 17th day of May, 2000.**

**A.B. SHAH**

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**JUDGE OF APPEAL**

**E. OWUOR**

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**JUDGE OF APPEAL**

**M. KEIWUA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**