



IN THE COURT OF APPEAL

AT MOMBASA

(Coram: Law, Miller & Potter JJ A)

CRIMINAL APPEAL NO. 51 OF 1980

BETWEEN

HUSSEIN SALIMAPPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal against the dismissal by Simpson J in the High Court, Mombasa, on 11th August 1980 in Criminal Appeal No 186 of 1980)

JUDGMENT OF THE COURT

The appellant was convicted by the Resident Magistrate at Mombasa of being in possession of *cannabis sativa* (bhang) contrary to section 10(e) of the Dangerous Drugs Act. He appealed to the High Court and his appeal was dismissed.

On the concurrent findings arrived at by the courts below, it was the appellant who led the police to a room in a house, who opened the door and who, from under the bed in the room, pulled out a box and a plastic container which between them contained some 19 kilograms of bhang.

Both courts below were satisfied that this evidence was sufficient to show possession of the bhang on the part of the appellant.

Mr Mboghli Msagha has made it his main ground of appeal that the evidence accepted by the courts below did not justify a finding of possession in law, and he relied on *Biharusi d/o Ruanda v R* [1959] EA 696, in which the question of possession of diamonds in relation to the Diamond Industry Protection Ordinance of Tanganyika was considered.

The Court considered and approved the definition of “possession” to be found in *Stephen’s Digest of the Criminal Law*, which is as follows:

A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in the case of need.

We take this definition to mean, not that any legal title has to be proved, nor that access to the complete exclusion of all other persons has to be shown, but that a possessor must have such access to and physical control over the thing that he is in a position to deal with it as an owner could to the exclusion of strangers. In our view the evidence in this case satisfies those requirements, and we agree with the courts below that possession was established within the meaning of the Dangerous Drugs Act.

Accordingly we order that this appeal be dismissed.

Appeal dismissed.

Dated and delivered at Mombasa this 24th day of October, 1980.

E.J.E LAW

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JUDGE OF APPEAL

C.H.E MILLER

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JUDGE OF APPEAL

K.D POTTER

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JUDGE OF APPEAL

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