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| Case Number: | Criminal Appeal 94 of 2004 |
| Date Delivered: | 10 Nov 2005 |
| Case Class: | Criminal |
| Court: | High Court at Malindi |
| Case Action: | Judgment |
| Judge: | William Ouko |
| Citation: | SIZA MLANDA NYALE v REPUBLIC [2005] eKLR |
| Advocates: | Mr. Ogoti for the Republic |
| Case Summary: | Criminal law - possession of narcotic drugs - appellant convicted of possession of 25 rolls of cannabis sativa or bhang which were not in a medical preparation - appellant convicted on his own plea of guilty and sentenced to imprisonment for 4 years - appeal against sentence - maximum sentence for the offence being imprisonment for 20 years - whether the sentence of 4 years was harsh and excessive -Narcotic Drugs and Psychotropic Substances (Control) Act sections 2(b), 3(1) |
| Court Division: | Criminal |
| History Magistrates: | - |
| County: | - |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | Appeal dismissed |
| History County: | - |
| Representation By Advocates: | One party or some parties represented |
| Advocates For: | - |
| Advocates Against: | - |
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Sum Awarded:

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**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI**

Criminal Appeal 94 of 2004

(From original conviction and sentence Kilifi Cr. Case No. 643 of 2004 before Mr. C. O. Obulutsa SRM)

SIZA MLANDA NYALE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This is an appeal against sentence only, the appellant having pleaded guilty to the offence of being in possession of narcotic drugs contrary to Section 3 (1) as read with Section 2 (b) – (The recorrect provision is Section 2 (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act.

The particulars of the charge being that on 1st September, 2004 at Majengo village, Kilifi, the appellant was found in possession of 25 rolls of Cannabis sativa (bhang) which were not in medicinal preparation. After pleading guilty the appellant was sentenced to 4 years imprisonment. It is this sentence he has challenged in this appeal as being harsh. The High Court in exercising its appellate jurisdiction can only interfere with a sentence passed by the lower Court, where the appellant pleaded guilty, if the sentence was excessive, in the circumstances of the case, or illegal.

A person who has been found or pleaded guilty to a charge of being in possession of drugs under Section 3 (1) of the Narcotic Drugs and Psychotropic Substances (control) Act, is liable under the second limb of subsection 2 (a) of the said Act to imprisonment for 20 years. Clearly the sentence of 4 years is both within the provision of the law and not excessive. I find no merit in this appeal. The same is dismissed.

Dated and delivered this 10th day of November 2005 at Malindi.

W. OUKO

JUDGE

8.11.2005

Coram

W. Ouko

Judge

Mr.Ogoti for state

Appellant not brought

Judgment deferred to 9th November 2005

Preliminary objection to issue.

W.OUKO

JUDGE

9.11.2005

W.Ouko

CC: Gladys

N/a Mr.Ogoti for state

Court: Judgment deferred to 10.11.2005.

W.OUKO

JUDGE

10.11.2005

Coram

W.Ouko, J.

Mr.Ogoti

Appellate present

CC. Gladys

Judgment delivered.

W.OUKO

JUDGE



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