

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO. 61/2007**

BETWEEN

SAINTMAN KAMUNA APPELLANT

-AND-

THE REPUBLIC RESPONDENT

CORAM : HON JUSTICE NYIRENDA

: Mr. Banda, Counsel for the State
: Mr. Chidothi, Counsel for the Appellant
: L.C. Munyenjembe, Court Interpreter

JUDGMENT

This is an appeal against conviction and sentence. The appellant Saintman Kamuna was convicted on his own plea of guilty on a charge of being found in possession of Indian hemp contrary to Regulation 4(a) of the Dangerous Drugs Regulations as read with Section 19(1) of the Dangerous Drugs Act.

In appealing against conviction it is contended that the elements of the offence were not fully put to the appellant. It is further contended that the facts presented in court did not fully support the charge.

As to sentence it is contended that it is manifestly excessive in all the circumstances of the case.

Much of what counsel for the appellant has submitted has been properly challenged and explained by the State and ordinarily this court would have been inclined to dismiss the appeal but for one critical observation.

The report from Chitedze Research Station on the examination of the drug is not conclusive. It is lacking in most critical area where it is supposed to confirm whether the drug was positively or negatively identified as Indian Hemp. This is a serious omission and not a matter that can be cured by Section 3 and 5 of the Criminal Procedure and Evidence Code.

That said however and as observed earlier the allegations against the appellant are very strong. This is not a matter that should be taken away from the state on

account of the report being inconclusive. It is only proper that I send this matter back to the lower court for a retrial. I will desist from making further comments least they prejudice the retrial. I make an order that the appellant's retrial shall commence within forty five days from the date hereof and in any event be concluded within ninety days.

While awaiting retrial the appellant shall be remanded in custody. If retrial does not commence within the forty five days the appellant shall be deemed acquitted of the charges in this matter.

PRONOUNCED in Open Court at Lilongwe this 17th day of October, 2007.

A.K.C. Nyirenda

J U D G E