



**Tapen v Republic (Criminal Revision E370 of 2024)
[2024] KEHC 15049 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E370 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

PETER LONDEA TAPEN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of trafficking in Narcotic Drugs (Bhang) contrary to section 4(a) of the Narcotic Drugs and Psychotropic Control Act. He also an alternative charge of being in possession of Cannabis Sativa contrary to section 3(1) as read with Section 3(2)(b) of the Narcotic Drugs and Psychotropic Substances Control Act.
2. The applicant pleaded guilty to the offence before Hon. R. Odenyo on 27th May, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 30,000/= and in default to serve 1year imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6)(a) &(b) of the *Constitution*.
4. The applicant seeks review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.



- b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
6. Having carefully weighed the circumstances of this case, with particular attention to the Applicant's potential for rehabilitation. The Applicant, being a young person with considerable potential for reform, would benefit significantly from a non-custodial sentence coupled with proper guidance and counselling.
7. Therefore, this Court orders that the Applicant's remaining period of incarceration be converted to probation sentence under close supervision of the Probation Officer, Uasin Gishu County.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF NOVEMBER 2024.

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R. NYAKUNDI

JUDGE

