



**Sakawa v Republic (Criminal Revision E396 of 2024)  
[2024] KEHC 16376 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E396 OF 2024  
RN NYAKUNDI, J  
DECEMBER 23, 2024**

**BETWEEN**

**DUKE SAKAWA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of being in possession of Cannabis Sativa contrary to section 3(1) as read with section 3(2) (a) of the Narcotic Drugs and Psycotropic Substance Control *Act, No. 4 of 1994*. The particulars of the offence were that on 11<sup>th</sup> September, 2024 at 12:00hrs in Maranatha area Langas estate in Kapseret Sub-County within Uasin Gishu county was found in possession of one hundred (100) rolls of bhang valued at Kshs. 5,000/= which was not prepared for medical use in contravention of the said Act.
2. The applicant pleaded guilty to the offence before and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 50,000/= serve 6 months in prison.
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. According to the applicant, the sentence imposed not lenient. He seeks a review to a non-custodial sentence.
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. The nucleus of any correctional system is its rehabilitative and reparative functions and in the famous words of Lord Hewart, Justice must not only be done, but must also be seen to be done". This dictum was laid down in the case of Rex v. Sussex Justices, [1924] 1 KB 256. The empirical evidence in this matter shows that the offender has been rehabilitated and is reformed, ready for re-integration into the society.
7. Having thoroughly examined the circumstances of this case, a non-custodial sentence would be appropriate. The accused is placed under probation supervision for a period of two months. To ensure compliance, the assigned probation officer shall submit detailed monthly reports to this court. The court expressly warns that any breach of probation conditions will result in the immediate imposition of custody for the duration of the unexpired term. This decision reflects both the court's commitment to rehabilitation and its insistence on strict adherence to probation requirements.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF DECEMBER 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

