



**Wafula alias Peter v Republic (Criminal Revision E412 of 2024)
[2024] KEHC 16386 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E412 OF 2024
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

DENNIS WAFULA ALIAS PETER 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](#). The particulars of the offence were that on 21st June, 2024 at Mangula area, Turbo Sub-County within Uasin Gishu County was found in possession of 41 rolls of bhang with a street value of Kshs 2,050/= which was not in form of medical preparation form.
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 serve 2 years 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. After careful consideration, I am of the view that this case warrants a non-custodial sentence. The accused shall serve 4 months under probation supervision. The probation officer must submit monthly reports to verify compliance. This court firmly states that any violation of probation terms may lead to immediate reinstatement of the custodial sentence for the remaining period.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF DECEMBER 2024.

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R. NYAKUNDI

JUDGE

