



REPUBLIC OF KENYA



**Ogalo v Republic (Miscellaneous Criminal Application E003 of 2023)  
[2023] KEHC 25749 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25749 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2023**

**DR KAVEDZA, J  
NOVEMBER 27, 2023**

**BETWEEN**

**CALVIN OTIENO OGALO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged, convicted and sentenced to serve seven (7) years imprisonment and a fine of Kshs. 2 million, in default, to serve one (1) year imprisonment for the offence of trafficking in narcotic drugs contrary to section 4(a) of the *Narcotic Drugs and Psychotropic substances (Control) Act* No. 4 of 1994.
2. The applicant has now filed a Notice of Motion application dated 6<sup>th</sup> October, 2023 seeking revision of his sentence. He avers that he is ailing and that his continued incarceration will significantly affect his wellbeing and that of his dependants who look upon his for sustenance and providence. He thus prays for a non-custodial sentence for the remaining term of his sentence. The application is supported by an affidavit sworn by the applicant in which he reiterates the said grounds.
3. The application was canvassed by way of oral submissions. Counsel for the applicant urged that the applicant has served a substantial part of his sentence being 3½ years and has a balance of about 2 years. He therefore prayed for the court to allow the application.
4. The State through Mr Mutuma conceded that the applicant has served a substantial part of his sentence and has a remainder of less than 3 years. Therefore, he did not oppose the appeal.



5. The application invokes the revisionary jurisdiction of this court which is donated by section 362 of the *Criminal Procedure Code* which reads as follows:

“...The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

6. I have considered the application and the grounds in support of the same. The applicant has averred that he is sickly and his health continues to deteriorate due to incarceration. He thus prays for a non-custodial sentence so as to obviate any further insidious deterioration of his health.

7. There being no objection from the prosecution and considering that the applicant has served a substantial part of his sentence, the application is allowed.

8. Accordingly, the sentence imposed by the trial court is hereby set aside and substituted with an order that the sentence served is sufficient. The applicant shall be released forthwith unless he is lawfully held for any other reason.

9. It is so ordered.

**RULING DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF NOVEMBER 2023.**

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**D. KAVEDZA**

**JUDGE**

**In the presence of:**

Mr. Mutuma for the State.

Mr. Ogutu for the applicant.

Applicant present (VTC)

