



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E062 OF 2021**

**ONESMUS KABUBI MWANGI.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. The Applicant herein was charged with being in possession of bhang contrary to **Section 3 (2) (a)** as read with **Section 3 (2) (1)** of the **Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994**. The particulars of the offence were that on the 21<sup>st</sup> day of January, 2020 at Machinery area in Kipipiri Sub-County within Nyandarua County, he was found in possession of narcotic drug to wit 4 grammes of bhang which was not solely prepared medically for his own consumption.

2. In Count II, the Applicant was charged with unlawfully assaulting a Police Officer in that on the 21<sup>st</sup> day of January, 2020 at Machinery area in Kipipiri Sub-County within Nyandarua County, he willfully and unlawfully assaulted No. 256084 PC LABAN KORIR who at the moment was in due execution of his police duties.

3. The Applicant was convicted on his own plea of guilty. In Count I, he was sentenced to serve one (1) year imprisonment and two (2) years imprisonment in Count II. The sentences were to run consecutively.

4. He did not appeal either the conviction or sentence. Instead on 8<sup>th</sup> March, 2021 he filed a Notice of Motion application in which he seeks a review of the sentence firstly, that he be placed on a non-custodial sentence and secondly, that the sentences be ordered to run concurrently. In oral submissions, he further asked that the period he was in remand custody prior to sentencing be taken into account.

5. Learned State Counsel, Ms. Maingi for the Respondent did not oppose the application.

6. I have accordingly considered the respective submissions as well as the original trial court record. What is clear is that the Applicant assaulted the police officer after he was stopped on suspicion that he was a criminal. He then confronted PC Laban Korir whom he hit and he sustained injuries. Bhang was recovered from him. From these facts, it is clear that the offences were committed in sequence and arose from similar circumstances. Whilst the court cannot condone assaulting of police officers while they are carrying out their duties, there was no justification for ordering that the sentences run consecutively.

7. It is on this ground I consider that the Applicant having been arrested on 22<sup>nd</sup> January, 2020, has been in remand custody for now exactly two years, which may be in excess of the jail term had the sentences been ordered to run concurrently.

8. Accordingly, I set aside the order that the sentences were to run consecutively and substitute it therefor with an order that the sentences would run concurrently. The Applicant has accordingly served the sentence and I order that he be forthwith set free unless otherwise lawfully held.

9. It is so ordered.

**DATED AND DELIVERED AT NAIVASHA THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**G. W. NGENYE-MACHARIA**

**JUDGE**

1. Applicant in person.

2. Ms Kirenge for the Respondent.

3. Quinter Ogutu - Court Assistant.