



**OMK v Republic (Criminal Miscellaneous Application E008 of 2020)
[2021] KEHC 9803 (KLR) (12 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL MISCELLANEOUS APPLICATION E008 OF 2020
JN ONYIEGO, J
FEBRUARY 12, 2021**

BETWEEN

OMK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Appearing before the Resident Magistrate Law Courts Hon. E.Nyakundi, the Appellant was convicted on his own plea of guilty for the offence of being in possession of narcotic drugs contrary to section 3(1) as read out with section 3 (2) (a) of the narcotic drugs and psychotropic substances control Act No. 4 of 1994. Subsequently, he was on 24.6.2020 sentenced to serve 3 years imprisonment.
2. Despite his mitigation that he was HIV positive, the court found that he was not remorseful and that he was not a first offender having been convicted of similar charges before.
3. Aggrieved by the conviction and sentence, he moved to this court only for review of his sentence. Vide his chamber summons dated 6.11.20, he pleaded for a non-custodial sentence. During the hearing, he reiterated that he was a family man and that he will comply with non-custodial sentence terms. The state opposed the application arguing that the appellant was a repeat offender.
4. I have looked at the nature of the offence committed against the severity of the sentence imposed. In exercise of its revisionary powers, the court is guided by the sentencing policy guidelines in that, the court must consider the principle of proportionality before sentencing.
5. The severity of the sentence to be imposed must be commensurate to the seriousness of the offence committed. The appellant was found in possession of 3 half sticks of bhang valued at Kshs 300/=. I do not find three years imprisonment to be proportionate to the offence. In my view, the sentence is harsh and excessive. Accordingly, I do hereby substitute the sentence of 3 years imprisonment with one year imprisonment to be calculated from the date he was sentenced.



DATED, SIGNED AND DELIVERED THIS 12TH DAY OF FEBRUARY 2021

J.N. ONYIEGO

JUDGE

