



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION E055 OF 2021**

**KELVIN AKOTH ALIAS RAS .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(Being an Application for Revision of sentence in Ukwala SRMCRC 134 of 2021 on 8.03.2021 by Hon. C.I. Agutu – Senior Resident Magistrate)*

**RULING ON REVISION**

1. The Applicant **Kelvin Akoth alias Ras** was charged with the offence of **possession of 37 rolls of cannabis sativa (bhang) contrary to Section 2(1) as read with Section 3(2) (b) of the Narcotic drugs and Psychotropic substances control Act No. 4 of 1994**. He was arraigned before Hon. C.I. Agutu, Senior Resident Magistrate – Ukwala on 8.3.2021 and is recorded to have pleaded guilty to the charge in Kiswahili “Ni Ukweli” upon which facts were read to him and 37 rolls (sic) produced as Exhibit 1. The accused then is said to have stated: “Facts right” in English and the court entered plea of guilty and sought for mitigation to which the accused said: “I pray for leniency. It give me strength. I have children.” The court then sentenced the accused to a fine of KShs.50,000/= in default to serve one year imprisonment. The rolls (sic) to be destroyed.
2. There is no record to show if the accused was a first or repeat offender. In addition, there is no conviction entered against him. Having considered all the above, I find no basis upon which I should examine the Probation Officer’s Report. I find that the proceedings leading to the sentencing of the applicant were irregular and fatally defective. There being no conviction and as the plea was overtly equivocal, I have no option but to quash those proceedings of 8.3.2021 and set aside the sentence of one year imprisonment.
3. Therefore, unless otherwise lawfully held, the applicant Kelvin Akoth alias Ras is forthwith set at liberty.
4. File closed.
5. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 24<sup>th</sup> day of June, 2021**

**R.E. ABURILI**

**JUDGE**