

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. CRIMINAL APPLICATION NO. 42 (E042) OF 2021

JOHN KARANA SITAT.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, **John Karana Sitati**, was convicted of the offence of being in possession of **Narcotic drugs contrary to Section 3(1) of the Narcotic drugs and Psychotropic Substances Control Act**. According to the Applicant, he was in possession of 30 Kgs of cannabis sativa. He was sentenced to serve five (5) years imprisonment. He has applied to this court to have the custodial sentence that was imposed upon revised so that he can either have the sentence reduced or substituted by a non- custodial one.

The Applicant has applied to this court for a revision of his sentence. The Applicant told the court that he committed the offence due to economic problems. He comes from a family that was not financially stable. He was the sole breadwinner of his family. He regrets committing the offence and urged the court to consider the fact that in the period that he has been in prison he had reformed. He pleaded with this court to convert the custodial sentence that was imposed upon him to a non-custodial one.

Mr. Omooria for the State was not persuaded by the Applicant's plea for reduction or revision of sentence. He submitted that the Applicant had committed a serious offence which deserves even more serious punishment than the one that was imposed by the trial court. He was of the view that the sentence that was imposed on the Applicant was lenient in the circumstances. He should therefore serve the same. No persuasive grounds had been placed before the court to enable it interfere with the sentence.

When the trial court sentenced the Applicant, it was exercising judicial discretion. This court can only interfere with the sentence if it is established that the sentence was either too harsh or too lenient as to attract the sanction of this court. The court can also interfere with the sentence if it is established that the trial court applied the wrong principle of the law or failed to take into account the correct sentencing principle.

In the present application, it was clear to this court that the sentence that was meted on the Applicant was a legal one. Although it veered on the lenient side, this court cannot interfere with the same. It fitted the crime that the Applicant committed. This court is mindful of the fact that narcotic drugs similar to the one that the Applicant was found in possession of has caused untold havoc to the health and wellbeing of our youths. It is only just and fair in the circumstances for purveyors of the narcotic drugs to be dealt with firmly to discourage those who may be tempted to engage in the business. Notwithstanding the Applicant's plea that he had reformed in the period that he has been in custody, this court is not convinced that this is one of the cases that it can exercise its sentencing discretion in favour of the Applicant.

In the premises therefore, this court finds no merit with the Applicant's application for revision of sentence. The same is hereby dismissed, it is so ordered.

DATED AT KITALE THIS 23RD DAY OF JUNE 2021

L. KIMARU

JUDGE