



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**(Coram: Odunga, J)**

**CRIMINAL REVISION NO. 186 OF 2020**

**ANN MBULA KIMATU.....APPLICANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant herein, **Ann Mbula Kimatu**, was on 18<sup>th</sup> February, 2019 convicted of the offence of **Trafficking in Narcotics Drugs Contrary to section 4(a) of the Narcotics Drugs and Psychotropic Substances Control Act**, No. 4 of 1994. The facts were that on 8<sup>th</sup> February, 2019 at around 1030 hours at Mjini Area, Machakos sub-county within Machakos County, she was found trafficking narcotic drugs namely 10 kilogram of cannabis of street value Kshs 30,000.00 by selling it to customers. She pleaded guilty, and was sentenced to serve three years' imprisonment.
2. In this revision the applicant seeks a review of the sentence. From the Probation Officer's Report, in 2001, the applicant was convicted of a similar offence and was sentenced to 10 years' imprisonment. While in prison, the applicant seems to have acquired tailoring skills and when she left prison she was given a sewing machine but has not been using the same. Her family however vouched for a non-custodial sentence for her and undertook to help in her rehabilitation. It was indicated that her home report is positive and that she is remorseful. The local administrative officers were also of the view that the applicant though a repeat offender may be given a second chance considering the fact that she has young children to take care of. From the said report the applicant's youngest child in 10 months old while the eldest is 25 years old and is independent.
3. The report concluded that the offender is fit for rehabilitation through non-custodial sentence.
4. As regards the sentence, the Supreme Court in **Francis Karioko Muruatetu & Another vs. Republic, Petition No. 15 of 2015** that:

**“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v. Republic Criminal Appeal No. 1 of 2015; [2015] eKLR*, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:**

**“Sentences are imposed to meet the following objectives:**

- 1. Retribution: To punish the offender for his/her criminal conduct in a just manner.**
- 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.**
- 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.**
- 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.**

*5. Community protection: To protect the community by incapacitating the offender.*

*6. Denunciation: To communicate the community's condemnation of the criminal conduct.”*

**The sentencing policy states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict.”**

5. In this case, it is true that the offence with which the applicant is charged cries loud for retribution, deterrence, rehabilitation, community protection and denunciation.

6. I appreciate that under Article 55(4) of the Constitution a child's best interests are of paramount importance in every matter concerning the child and this Court should not be seen to be sacrificing the interest of the children in order to appease the spirits of the society. In this case, the current probation report of the applicant reveals that she is now forty years and is now mature and wishes to settle down and look after her young children who are suffering in her absence and plans to start business if her sentence is reviewed.

7. Considering the current situation which has been compounded by the COVID 19 that is ravaging the country, the fact that the applicant has a young child and her other children have no one to look towards, I agree with the probation report that her sentence ought to be reviewed but with a stiff warning.

8. In the premises, the applicant is hereby sentence to serve one-year Community Service Order at the Probation Tree Nursery, Machakos under close supervision of the County Probation Officer.

9. It is so ordered.

**Ruling read, signed and delivered in open Court at Machakos this 25<sup>th</sup> day of November, 2020.**

**G V ODUNGA**

**JUDGE**

**In the presence of:**