



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 5 OF 2018

HILTON MUKUNDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Intended Appeal from Conviction and sentence of the P.M'S Court in Criminal Case No. 1 of 2017 at Marimanti delivered by HON. S.M. Nyaga (RM) on10/1/2017).

R U L I N G

1. The applicant herein Hilton Mukundi was charged with the offence of being in possession of cannabis sativa contrary to **Section 3(1)** as read with **Section 3(2)** of the Narcotic and Psychotropic Substance Control Act No. 4 of 1994.

The particulars of the charge were that on 31st December, 2016 at Makutano Police Station Tharaka North he was found in possession of 7 rolls of cannabis sativa (Bhang) which was not in form of any medical preparation. The applicant pleaded guilty he was charged and convicted on his own plea of guilty and sentenced to serve 7 years imprisonment.

2. The applicant has now moved this court under the provisions of **Sections 362 and 364** of the **Criminal Procedure Code** for review of his sentence stating among the grounds that he has spent one year in prison and has since reformed. He is asking this court to be lenient and give him another chance so that he can care for his family. He further says that he is a 1st offender and remorseful.

3. This court has called for the lower court file **No. Marimanti Principal Magistrate's court Criminal Case No. 1/2017** pursuant to the provisions of **Section 362** of the **Criminal Procedure Code** and I have perused through the file. The applicant was found in possession of 7 rolls of bhang (cannabis sativa) and convicted on his own plea of guilty and sentenced to serve 7 years imprisonment.

In convicting him, the trial court observed as follows:

" I have perused the probation officer's report and seems the offender is a dangerous man and who is not willing to change for being in criminal activities left right and centre(sic) . He is also a liar before court. I am aware of his pending plea vide Criminal Case No. 15/17,"

The trial court went ahead and sentenced him to serve 7 years imprisonment. Of course the trial court exercised its discretion because the sentence provided under **Section 3 (2)** of Narcotic and psychotropic substances Control Act is upto 10 years imprisonment. In the exercise of that discretion, a court is required to do so judiciously and this court can only interfere if it is shown that the court took into account irrelevant/extraneous factors or failed to take into account relevant factors in the exercise of the discretion. As seen from the above observation made by the trial court it is apparent the trial put more weight on another criminal matter where the applicant had not been found guilty. While it is true that the probation report was adverse to him being given a non custodial sentence, in my view sentencing the applicant to serve 7 years imprisonment for being found with 7 rolls of bhang is a little bit harsh though legal.

In the premises this court finds merit in the applicant's plea for revision. I allow his application dated 22nd February, 2018 by upholding his conviction but I will set aside his 7 years imprisonment and in its place substitute the same with the period the applicant has already served (Approximately 1 year 10 months).

Dated, signed and delivered at Chuka this 24th day of October, 2018.

R.K. LIMO

JUDGE

24/10/2018

Ruling signed, dated and delivered in the open court in the presence of the applicant in person and Machirah for Respondent.

R.K. LIMO

JUDGE

24/10/2018