



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**REVISION CASE NO. 4 OF 2017**

**FREDRICK MUTUA MUSYIMI .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The appellant herein has filed a memorandum on the 13/2/2017 seeking that the sentence meted out on him on the 1<sup>st</sup> February, 2017 at the Senior Principal Magistrate's court at Kangundo by Hon E. Agade be reviewed. The memorandum raised the following issues for this court's consideration.

- (1) THAT he is a first offender and prays for leniency.**
- (2) THAT he is deeply remorseful and repentant for the offence.**
- (3) THAT he is a young man who was the sole breadwinner for his wife and two young children as well supporting his aged parents.**
- (4) THAT he is reformed through prison interrogated programs.**
- (5) THAT he has learnt his lesson, values in life need for hard work, integrity and abiding by the rule of law in society.**
- (6) THAT he is spiritually upgraded through chaplaincy spiritual programs in the correctional centre.**
- (7) THAT he is ready to carry on the newly found virtues to the society if given a second chance by the Honourable Court.**
- (8) THAT this court do impose non-custodial sentence for the sake of his starving family.**

2. The Appellant had been charged with the offence of being found in possession of cannabis sativa contrary to section 3(1) as read with Section 3(2) of the narcotic Drugs and Psychotropic substances Control act No.4 of 1994. The particulars of the offence were that on the 31<sup>st</sup> day of January, 2017 at around 1620 hours at Koma village in Matungulu Sub-county within Machakos County, was found being in possession of cannabis sativa to wit 50 rolls with a street value of Kshs. 1,000/= which was not in any medicinal form. The Appellant pleaded guilty to the said charges and was subsequently convicted and sentenced to serve five (5) years imprisonment.

3. The Appellant seems aggrieved by the sentence handed out by the trial court and now wants the same reviewed. He has urged this court to impose a non-custodial sentence since he has reformed and be given a second chance to take care of his young family and aged parents.

4. It must be pointed out that an Appellant who is convicted on his own unequivocal plea of guilt has no right of appeal against conviction but he can only appeal against sentence. This is the clear provision of Section 348 of the Criminal Procedure code which provides thus:-

***“No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as the extent on legality of the sentence. “***

5. The record of the lower court indicates that the Appellant’s mitigation was received and that the court noted that the offence carried a sentence of upto 20 years and proceeded to impose a sentence of five (5) years. This was on 1/2/2017 and two weeks thereafter the Appellant filed for revision of sentence. This court called for a Probation Officer’s report which was duly availed and it is dated 17/03/2017. I have perused the said report and note that he is not a first offender as it was established that he had two previous convictions relating to being drunk and disorderly as well as being a bhang peddler at Koma area. It is also reported that his associates are of questionable character. It is further reported that Appellant’s home place is notorious for bhang peddling which is a concern to the community. The Probation Officer recommends that the Appellant is not suitable for non-custodial sentence. It is apparent therefore that the Appellant’s request for a non-custodial sentence is not tenable. In view of the report by the probation officer, the Appellant has barely served the sentence and his claim that he has reformed while in prison is not believable. The sentence imposed by the lower court is not excessive in the circumstances since his mitigation was duly considered. The offence carries a sentence upto twenty (20) years and the five (5) years given by the lower court is nothing but a slap on the wrist. I decline to interfere with the sentence of the lower court and find the Appellant’s request for review of sentence not merited. The appeal against the sentence is dismissed. The Appellant is ordered to continue to serve the sentence handed by the trial court.

It is so ordered.

Dated, signed and delivered at Machakos this 27<sup>th</sup> day of March 2017.

**D. K. KEMEI**

**JUDGE**

In the presence of:

..C/A Muoti .....

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