

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.79 OF 2015

PAUL ODHIAMBO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Paul Odhiambo was convicted of being in possession of **Narcotic Drugs** contrary to **Section 3(1)** as read with **Section 3(2)(a)** of the **Narcotic Drugs and Psychotropic Substance Control Act**. The particulars of the offence were that on 25th September 2014 at Kiserian in Kajiado County, the Applicant was found in possession of six (6) rolls of Cannabis Sativa (Bhang) with a street value of Kshs.120/- in contravention of the said **Act**. He was sentenced to serve four (4) years imprisonment after the trial court had established that the Applicant was unsuitable to serve non-custodial sentence due to the fact that he was a repeat offender.

The Applicant has applied to this court to have the said custodial sentence revised. The Applicant states that the said custodial sentence imposed on him was harsh and should be reduced to non-custodial sentence. During the hearing of the application, the Applicant amplified his request for reduction of sentence by stating that he had learnt his reason in the period that he has been in prison. He had learnt a trade i.e. painting and was keen to put it into practice upon his release from prison. He urged the court to favourable consider his request. Ms. Maina for the State opposed the application for reduction of sentence. She was of the view that the custodial sentence imposed by the trial court was lenient taking into consideration that the Applicant may have been sentenced to serve a much harsher legal custodial sentence. She submitted that the Applicant had no excuse why he was consuming an illegal drug.

When the trial magistrate sentenced the Applicant to serve the custodial sentence, she was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant. In the present application, it was clear to this court that the custodial sentence imposed by the trial court, though legal, was harsh and excessive in the circumstances. It was apparent to this court that the trial court did not take into account the fact that the illegal drugs that the Applicant was found with were for his own consumption. The Applicant was not trafficking the said drugs. Under the **Narcotic Drugs and Psychotropic Substance Control Act**, an accused person found with illegal drugs for his consumption and an accused person found while trafficking in narcotic drugs, are treated differently in sentencing. An accused person found with illegal drugs for his consumption is treated relatively leniently as compared with an accused person convicted of trafficking narcotic drugs.

In the present application, it was apparent to this court that the custodial sentence meted on the Applicant was harsh. It shall accordingly be reviewed. The Applicant has been in prison for about twenty (20) months. This court is of the view that the period that the Applicant has been in prison is sufficient punishment for him. In the premises therefore, his custodial sentence is commuted to the period served. He is ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF MAY 2016

L. KIMARU

JUDGE