

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL REVISION NO. 155 OF 2010

**REPUBLIC.....APPLICANT/
APPLICANT**

VERSUS

**RITA KABAGENDI.....ACCUSED/
APPLICANT**

RULING ON REVISION

The accused's name featured in a list generated from Malindi G. K. prison and the accused's name was in the list. It showed she had a balance of 2 years 9 months to serve as per letter dated 13th August 2010, signed by B. M. Mutunga (the OC Malindi G. K. prisons).

The accused was charged with the offence of being in possession of one medium roll of cannabis sativa worth kshs. 40/-. From the letter dated 9th August 2010 written by L N Mugambi, the National co-ordinator, CSO, addressed to the Commissioner of Prisons, those to be included in the exercise were inmates serving sentences of more than three years but remaining with LESS than three years to serve except those involved in inter alia drug offences relating to large quantities.

This then meant that accused qualified for CSO because;

- (a) The balance of the term she had of her jail sentence was less than three years – that figure having been given by the prison.
- (b) The quantity of the drug was so small and its value was negligible.

On account of these two observations, there was no impropriety on the part of the probation officer who prepared the report and made the recommendation.

There was also no error by this court, as I had earlier assumed. In the event that any one individual or institution is dissatisfied with the exercise carried out by this court, I grant leave to appeal against the order. In the meantime, there is no reason why accused should be held in custody in relation to the criminal case no. 150 of 2009 which was revised in criminal revision no. 155 of 2010, whatsoever. She must be released forthwith unless otherwise lawfully held.

Dated and delivered this 22nd day of March 2011

**H. A. OMONDI
JUDGE**