



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukhwana v Republic (Criminal Appeal E006 of 2023)  
[2025] KEHC 8474 (KLR) (16 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8474 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E006 OF 2023**

**AC BETT, J  
JUNE 16, 2025**

**BETWEEN**

**VINCENT MUKHWANA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**SENTENCE**

1. The Appellant was convicted on his own plea of guilty which the court has already held to have been unequivocal, of the offence of being in possession of cannabis sativa contrary to Section 3(1) as read with section 3(2), (4) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*.
2. The Appellant in his submissions urged the court to set aside the seven-year sentence on the ground that it was too harsh and that he has already learnt a lesson and is now reformed.
3. A sentence review report was filed by the Probation office. The report is not positive. It stated that the Appellant lacked strong parental guidance, and financial stability and although he has demonstrated willingness to reform while in prison, the same could be the result of living in a structured living environment. The report urges caution in determining whether to release the Appellant and calls for a structured release plan that involves ongoing community supervision, enrollment in post release vocational programs, and integration into substance abuse recovery initiatives.
4. The Judiciary Sentencing Guidelines 2023 sets down the objectives of sentencing as follows:-
  - “ 1. Align the sentencing process to the provisions of *the Constitution*.
  2. Guide the process of determining sentences.
  3. Link the sentencing process to the overarching objectives of sentencing.
  4. Address the disparities in sentencing by structuring the exercise of discretion.



5. Provide a benchmark for assessing the exercise of discretion in sentencing.
6. Address the overutilisation of custodial sentences and promote the use of noncustodial sentences.
7. Promote restorative justice values and processes during sentencing.
8. Guide the sentencing of specific groups of offenders with unique needs.
9. Facilitate the participation and involvement of victims in the sentencing process.
10. Enhance coordination of the agencies involved in the sentencing process as well as in supervision of the sentences.”

5. In *Thomas Mwamba Wenji v Republic* [2017] eKLR the Court of Appeal while citing the case of *Alister Anthony pareira v State of Maharashtra* (Supreme Court of India) stated as follows:-

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate and proportionate sentences commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles; twin objective of sentencing policy is deterrence and correction. What sentence would meet the end of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of crime, motive for the crime, nature of the offence and all the attendant circumstances. The principle of proportionality by sentencing a crime done is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment must bear relevant influence in determining the sentence of the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

6. In the premises, the court must consider the above objectives and principles while taking into account the circumstances of the case before determining the appropriate penalty for an accused person.
7. The Supreme Court in the case of *Francis Karioko Muruatetu v Republic* [2017] eKLR enunciated the relevant guidelines to be considered before sentencing. The specific guidelines are as follows:-

- a. age of the offender;
- b. being a first offender;
- c. whether the offender pleaded guilty;
- d. character and record of the offender;
- e. commission of the offence in response to gender-based violence;
- f. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the court considered relevant.



8. I have perused the trial record and noted that the Appellant was arrested after a report had been made that he was involved in selling bhang (cannabis sativa). He was found in possession of fifty-eight (58) brooms of bhang which when weighed, was found to be ten kilograms(10kgs). 58 brooms of bhang are not few. They could not possibly have been for personal consumption. In any event the Appellant in mitigation said that, he sells bhang to make a living.
9. While sentencing the Appellant, the trial court noted that although the Accused was a first offender, actions of people like him contribute to the consumption of drugs by young people which had led to hue and cry and was robbing the country of the future generation. She therefore considered the mitigating factors as well as the welfare impact of drugs in the society. These factors as well as the amount of cannabis recovered from the Appellant, led her to determine that a deterrent sentence was necessary. In the end, she sentenced the Appellant to seven (7) years' imprisonment.
10. Section 3 (1) and section 3 (2) of the Act provides:-
  - “(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.
  - (2) A person guilty of an offence under subsection (1) shall be liable—
    - (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and
    - (b) in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment.”
11. Since it has been determined that the Appellant sold cannabis sativa for a living and he was found in possession of a huge stash, the Appellant was liable to imprisonment for twenty (20) years.
12. The principles upon which an appellate court can review a sentence are well settled. It must be demonstrated that the sentencing court acted upon some wrong principles or overlooked some material factors, or that the sentence imposed is manifestly excessive in view of the circumstances of the case. In the case of Benard Kimani Gacheru v R [2002] eKLR the Court of Appeal held that:-

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”



13. There is nothing in the Appellant's submissions to demonstrate that the court exercised the sentencing discretion wrongly in arriving at the seven (7) year sentence. On analysis of the record and the sentence review report, I find that the sentence imposed by the trial court was neither harsh nor excessive nor was it arrived at upon the exercise of wrong principles or after overlooking of facts.
14. The upshot is that the appeal against sentence is not merited and I hereby dismiss the same.
15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16<sup>TH</sup> DAY OF JUNE 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Appellant in person

Ms. Chala for the Respondent

Court Assistant: Polycap

