



**Kariuki v Republic (Criminal Revision E149 of 2025)
[2025] KEHC 10549 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10549 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E149 OF 2025
RN NYAKUNDI, J
JULY 22, 2025**

BETWEEN

FRANCIS KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of possession of bhang. The brief facts are on the 12th day of October 2024 in KK area at Langas estate in Kapseret sub county, within Uasin Gishu County was found in possession of twenty-two (22) rolls of bhang valued at Ksh. 1050/= which was not prepared for medical use in contravention of the said act. He pleaded guilty to the offence convicted and sentenced to a fine of 100,000 in default two (2) years imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 9 months' probation at Langas Police station

Decision

1. This application is based on the provisions of the *Criminal Procedure Code* namely Section 357, 362, 364 as read with 382. The *Constitution* also provides under Art 50 (2) (p) (q) as follows:
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
 - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
2. The same constitution in Art 50 (6) (a) (b) expressly states as follows:



A person who is convicted of a criminal offence may petition the High Court for a new trial if-

- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - b. new and compelling evidence has become available.
3. This application is based on the social inquiry report dated 21st July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant

Current Family And Personal History

Family Background

The inmate before court is the son of Anne Nyambura who is a single mother and is operating as a casual laborer in Langas market. He was living with his mother on their half (1/2) acre piece of land which is utilized for residential purposes. He is the second-born in a family of four children There is no history of criminality in the family.

Personal history.

He was born in 2000 in Uasin Gishu County, upon attaining school going age, he was enrolled to Langas primary school where he did his KCPE in 2019 and scored 224 marks out of the possible 500. He did not proceed to high school due to financial constraints and since then he has been working as a casual Laborer until his arrest.

He is married to Mercy Wamboi and the union is blessed with two children. He still maintains contact with the family and they all live harmoniously. He abuses Bhang.

Prison Assessment Rehabilitation And Re-intergration

While serving his sentence, the inmate demonstrated significant commitment to rehabilitation. He states that he has undergone personal transformation and has learnt to obey the law. The prison authorities regard him highly and recommend his early release

Offenders' attitude Towards Non-custodial Sentence:

The offender accepts the non-custodial sentence.

Conclusion

Your Lordship, the inmate before court is a 25 years old man, sentenced to two years imprisonment for the offence of possession of narcotics. He is a husband and a father of two children. He owns up to the offence committed and he is remorseful. He has a supportive family that has frequently visited and encouraged him while in prison. The family is ready to liaise with our office in the rehabilitation and resettlement of the inmate in the community.

Recommendation

Considering the above, I recommend that the inmate be placed on community service order at Langas Police station for the period of 9 months'. During this time, we shall endeavor to offer him guidance and counselling on drug and substance abuse.



4. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
5. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (*UNODC, 2006*).
6. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
7. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and laxed supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community



plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.

8. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
9. In the instance case am hopeful that the review of custodial sentence and substitution of it with that of community service at Langas Police station will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 9 months being the balance of the custodial sentence. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS THIS 22ND DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

Representation:

M/s Sidi for the state

