



REPUBLIC OF KENYA



**Khaemba v Republic (Revision Case E094 of 2025)
[2025] KEHC 10504 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
REVISION CASE E094 OF 2025
RN NYAKUNDI, J
JULY 21, 2025**

BETWEEN

DAVID KHAEMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of being possession of narcotic drugs. The brief facts are on the 15th day of October 2024 at Eldoret main stage, in Turbo sub-county, within Uasin Gishu county, was found in possession of narcotic drugs (bhang) to wit 41 grams with street value of Kshs. 2050/= which was not in medical preparation form. He pleaded guilty to the offence convicted and sentenced to two (2) years imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 8 months at Kokwas Chief's office

Decision

2. 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.



3. 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.

4. This application is based on the social inquiry report dated 15th 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 home and personal circumstances

The inmate is the son of Joel Khaemba and Phanice Rebecca. He is married to Fatu Maisha and together they have 1 child name Joel. He used to work as a curtain maker in Eastleigh area of Eldoret town before he was arrested.

Prison assessment, rehabilitation and re-integration

The inmate also has been working in the prison kitchen gaining culinary skills and has also gained some mechanic skills. He plans to integrate what he has learnt in prison with his curtain making skills to become a better business person if released.

We interviewed his wife Fatu Maisha, who stated that the intimate left her pregnant and she has since delivered a young baby boy. She stated that they are going through a tough time financially and socially as they were depending on the inmate who has their breadwinner. She pleads with the court to grant him early release so that he can come home and take care of his young family.

Offenders' attitude and impact of imprisonment

The inmate has indicated that he has learnt his lesson from his time in prison and is ready and willing to be an outstanding citizen if he is granted an early release. He pleads with this honorable court to consider his young family that needs his love and support.

Conclusion

Your lordship, the above inmate is a 28-year-old man who has been convicted for the offence of possession of narcotic drugs contrary to section 3(1) and 2(a) of the [*narcotic drugs psychotropic substance Act*](#) No. 4 of 1994. He is remorseful and has used his time in prison to make his time outside more meaningful by gaining more skills and learning about the ills of narcotic drugs. His family is willing to help him reintegrate well back into the society. He is of sound mind and has fixed abode.

Recommendation

Your lordship, in view of the above findings, the inmate can be considered for a community service sentence for the remaining period of Eight months at Kokwas Chief's office

5. 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.
6. 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](#)).
 7. 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).
 8. 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.



9. 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.
10. In the instance case am hopeful that the review of custodial sentence and substitution of it with that of community service at Kokwas Chief's office will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 8 months being the balance of the custodial sentence. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 21ST DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

