



**Amenya v Republic (Criminal Revision 67 of 2024)
[2024] KEHC 3327 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 67 OF 2024**

DR KAVEDZA, J

APRIL 9, 2024

BETWEEN

AUSTIN AMENYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and pleaded guilty for the offence of being in possession of narcotic drugs contrary to section 3(1) as read with section 3(2) of the [Psychotropic Substances Control Amendment Act, 2022](#). He was sentenced serve 3 years imprisonment. He filed an application seeking sentence review as part of the prison decongestion. He urged the court to grant a non-custodial sentence.
2. The court called for a probation report which was filed on 15th February 2024 which have been considered.
3. I have perused the record of the trial court and nowhere did the learned magistrate give recognition of the fact that the Applicant had pleaded guilty to the charge therefore saving court’s time. The learned trial magistrate did not also recognize that the Applicant was a first offender. The court gave more weight to the seriousness of the charge and the need to pass a deterrent sentence. In so doing I find that the learned trial magistrate overlooked material factors which dictated a less severe sentence than the one imposed.
4. In those circumstances I find that the sentence of 3 years imprisonment was excessive and manifestly harsh having considered the Applicant pleaded guilty, was a first offender.
5. I allow the application for sentence review and set aside the sentence of 3 years imprisonment and substitute it was an order of probation for three (3) years.

Orders accordingly.



RULING DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL 2024

D. KAVEDZA

JUDGE

