



**Gachoka v Republic (Criminal Revision E031 of 2024)  
[2024] KEHC 3502 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3502 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E031 OF 2024  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**DAVID GACHOKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of being in possession of Cannabis Sativa (Bhang) Contrary to section 3(1) as read with Section 3(2) of the [Narcotic Drugs And Psychotropic Substances Control Act](#) No. 3 of 1994. The particulars of the offence are that on 17<sup>th</sup> January, 2024 at Job estate in Burnt Forest area In Ainabkoi Sub- County within Uasin Gishu County, the applicant was found in possession of Cannabis Sativa (Bhang) to wit 500 grammes of street value of Kshs. 5,000/=.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 4 years imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a)&(b) of the [Constitution](#).
4. The applicant seeks sentence review. The probation officer filed a report on 25<sup>th</sup> March, 2024. The said report is non-responsive. Interviews from the community indicate that they are not willing to receive him back for reasons that he has not served a substantial part of his sentence. I have considered the report and the offence in question.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
  - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.



- b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
  - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
  - d) Protection of the community: - where the offender is likely to pose a threat to the community.
  - e) Offender's responsibility to third parties: - where there are people depending on the offender.
  - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. The factors aforementioned encourage that first offenders be considered for a non-custodial sentence. The prison authorities indicated that the applicant has reformed and he is well behaved. I am inclined to grant the applicant a chance to serve a non-custodial sentence. Let the applicant serve the remainder of the sentence under probation i.e. 2 years 3 months. The applicant shall be under the supervision of the Probation officer and should strictly report to the said officer and in turn monthly reports shall be filed in court. In default, the custodial sentence shall revert.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

