



**Kibor v Republic (Criminal Revision E085 of 2024)  
[2024] KEHC 4279 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4279 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E085 OF 2024  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**KAY KIBET KIBOR ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation

Mark Mugun for the state

1. The applicant was charged with the offence of being in possession of Cannabis Sativa contrary to section 3(1) as read with section 3(2) (9) of the *Narcotic Drugs and Psycotropic Substance Control Act*, No. 4 of 1994. The particulars of the offence were that on 17<sup>th</sup> December, 2023 at Kengas area in Turbo Sub-County within Uasin Gishu County, the applicant was found in possession of Cannabis Sativa (Bhang) to wit 62 grams with a street v
2. The applicant pleaded guilty to the offence before Hon. P.N. Areri on 18<sup>th</sup> December, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 12 months in prison.
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 a sentence review based on the probation report filed on 28<sup>th</sup> March, 2024. The report indicates that the applicant has expressed the willingness to serve a community service order for the remainder of his sentence. The report recommended that the applicant is suitable for a non-custodial sentence of four months at Baharini Police Station.



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.
6. Further to the aforementioned, the [Community Service Orders Act](#) makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
7. I echo the words in the comparative case of *R. v GDP* (1991) 53 A Crim R 112, where the court summarized the principles as follows:

“However, it is generally accepted that in sentencing young offender’s considerations of general deterrence are not as significant as in the sentencing of an adult. This reflects an accepted norm that the community interest reflected in the sentencing of a child is not advanced by using him or her as an example but rather in seizing the opportunity to direct the child into rehabilitative efforts.”

8. The analysis of the facts of this case is such that it fits the legal framework of the Community Service Act as an alternative sentence to imprisonment. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve his sentence at Baharini Police station for a period of four months. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

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

.....

**R. NYAKUNDI**

**JUDGE**

