



**Kinyanjui v Republic (Criminal Revision E162 of 2024)
[2024] KEHC 6719 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E162 OF 2024
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

FRANCIS KINYANJUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Yusuf for the state

1. The applicant was charged with the offence of being in possession of narcotic drugs contrary to section 3(1) as read with section 3(2) (a) of the [Narcotic drugs and psychotropic substances Control Act](#) No. 4 of 1994.
2. The applicant pleaded guilty to the offence before Hon. D. Mikoyan on 5th February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 253,000/= and in default serve 12 months 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 a sentence review based on the sentence review report on record. The report is responsive. According to the report, the applicant is married to Ruth Wangoi who is a mother of two children. That the narcotic drugs in question are said to have been left behind by a customer. He accepts the blame promising to be vigilant in future.
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. Having gone through the facts of the present case and the fact that the applicant has readily admitted to the offence, I find the circumstances to be a perfect fit under 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 a community service order. Having served a custodial sentence for four months, he shall serve a remainder period of 8 months at Kamukunji police station. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and 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 6TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

