



**Mogambi & 3 others v Republic (Criminal Revision
E027 of 2024) [2024] KEHC 7414 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E027 OF 2024**

WA OKWANY, J

JUNE 13, 2024

BETWEEN

**JOSECK MOGAMBI 1ST APPLICANT
ENOCK ROBERT 2ND APPLICANT
SHADRACK NYARIBO 3RD APPLICANT
VICTOR ARASA 4TH APPLICANT**

AND

REPUBLIC RESPONDENT

*(From the original Conviction and Sentence in the Chief Magistrates’
Court at Nyamira, Criminal Case No. MCCR E019 of 2024 by
Hon. B.A. Jumar, Resident Magistrate on 25th January 2024)*

RULING

1. The Applicants were convicted on their own plea of guilty for the offence being in possession of *cannabis sativa* (bhang) contrary to Section 3 (1) as read with Section 3 (2) of the [Narcotic Drugs and Psychotropic Control Act](#) No. 4 of 1994. The trial court sentenced each of them to serve 1 years’ imprisonment. The Applicants have each served 2 months of their sentences. The Sentence Review Report filed by the Probation Officer on 3rd April 2024 recommends a non-custodial sentence in respect of the 2nd Applicant. I therefore direct that the 2nd Applicant serves a Community Service Order at Esanig Primary School under the supervision of the school head teacher for a period of 6 months.
2. The Sentence Review Report does not recommend a non-custodial sentence in respect to the 1st, 3rd and 4th Applicants. The said report indicates that the said Applicants community and family members were not agreeable to their release.



3. I have however considered the fact that all the Applicants have already served 2 months of the sentence. I consider the said period to be sufficient punishment for the offence that they committed and this is the reason why the matter was listed for consideration under the prison decongestion program.

Section 15 of the *Criminal Procedure Code* provides thus:-

- (1) Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (herein called the “operational period”) the offender commits another offence, whether that offence is punishable by imprisonment, corporal punishment or by a fine.
 - (2) Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.
 - (3) Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence.
4. Guided by the above provision and considering that our prisons are congested, courts are called upon to find alternative sentences other than custodial sentences in appropriate cases. In my view, this was an appropriate case for non-custodial sentence having regard to the nature of the offence that the applicants committed.
5. Consequently and in exercise of this court’s discretionary powers, I direct that the 1st, 3rd and 4th Applicants shall substitute the one-year imprisonment sentence to a suspended sentence on condition that they shall not commit any other offence for the next one year from today’s date. In breach of the conditions attached to the sentence, the applicants shall be arrested and brought before this court for an order that they continue with their custodial sentence in accordance with the law.

Orders accordingly.

DATED AND DELIVERED AT NYAMIRA ON THIS 13TH DAY OF JUNE 2024.

W. A. OKWANY

JUDGE

