



**Nduta & 2 others v Republic (Criminal Revision E067 of 2024)  
[2024] KEHC 7277 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7277 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E067 OF 2024  
AM MUTETI, J  
JUNE 6, 2024**

**BETWEEN**

**LEVIN NDUATI NDUTA ..... 1<sup>ST</sup> APPLICANT**

**PAUL NGIGE WAITHERA ..... 2<sup>ND</sup> APPLICANT**

**JOSEPH NYOIKE WAMBUI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application before me is for review of sentence in Kenol SRM's court Criminal Case No. E 1491/2023.
2. The applicants were convicted of various offences which included:-

Count I: House breaking contrary to Section 304 (1) (b) of the *Penal code*.

The charge was against Levin Nduati and Paul Ngige Waithera.

The two pleaded guilty to the charge and were sentenced to a fine of Ksh. 30,000/= or in default serve 6 months imprisonment. On the outset I reject the application for review of sentence as against the three applicants for reasons I shall state shortly.

Count II: The two accused faced a further charge of stealing contrary to Section 268 (1) as read with Section 273 of the *Penal Code*. The two pleaded guilty and were sentenced to a fine of Ksh 10,000 in default 3 months imprisonment.

Count III: Accused one Levin Nduati was charged with Trafficking in *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994.



He pleaded guilty and was sentenced to a fine of Ksh. 70,000/= in default 1 year imprisonment.

Count IV: The three applicants were jointly charged with conveying suspected stolen property contrary to Section 323 of the *Penal Code*. they all pleaded guilty and were sentenced to a fine of Ksh. 15,000/= and in default serve 3 months imprisonment.

Count V: The three applicants faced a charge of Trafficking in Narcotic drugs Contrary to Section 4(a) of the *Narcotic drugs and Psychotropic substances Control Act* No. 4 of 1994. the applicants pleaded guilty and affine of Ksh. 70,000/= in default one year imprisonment was imposed against each of them.

Count VI: The first applicant Levin Nduati was charged with handling suspected stolen property contrary to Section 323 of the *Penal Code*. He pleaded guilty and was sentenced to a fine of Ksh. 10,000/= and in default serve months imprisonment.

3. I have noted from the record that all the exhibits were produced and properties recovered were returned to the complainants. The magistrate proceeded to order the destruction of the drugs/psychotropic substances.
4. This court is not minded to review the sentences against all the applicants.
5. In arriving at this decision I have considered the facts in in toto and discovered something that I believe I should specifically mention.

It is this portion of facts which reads:-

“..... you were at Kaaga Area near Kagaa Sec. School. You had hidden yourselves in a thicket selling cannabis. On 23<sup>rd</sup> July 2023 officers of the police came to where you were near Kagaa Primary School playground where you slept selling cannabis.”

6. The facts place the 3<sup>rd</sup> applicants near two schools and in those two instances that the police found them, they were selling cannabis. The court is alive to the problem of sale of drugs in schools, is a matter one should take judicial notice of under Section. 60 of the *Evidence Act*. Schools routinely inspect students and their halls of residence for drugs. It is a problem that we all must partner as society and actors in the criminal justice sector to eradicate.
7. It would be very wrong for this court to place the applicants or any of them on community service orders for they would make a mockery of justice. The probation officer has found two of them unsuitable for CSO orders but in the report of Paul Ngige proposes that he is suitable for community service. I disagree with that proposition considering the totality of the facts and the gravity of the matter of drugs in the society generally.
8. The safety of our school children which includes keeping them away from persons who peddle drugs is a non-negotiable matter. All persons must be treated equally before the law as per Article 27 of the *Constitution of Kenya*.
9. I do not find any special circumstances in respect of Paul Ngige Waithera to justify his being placed on probation as his partners in crime do their term. He must suffer same fate.
10. All the Applicants' requests for Revision of their sentences are rejected, they are to serve the remainder of their prison term in view of the gravity of the offences they were charged with.



11. Peddling of drugs in the society and in particular education institutions must be brought to an abrupt halt. It ought to let it be made too expensive to all those that are bent on engaging in it; only then can we rid the community of drugs and substance abuse. It is s ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE 2024.**

**A. M. MUTETI**

**JUDGE**

In the presence of:-

Yussuf: Court Assistant

Applicant -

Mwangi for the Respondent

