



**Mutunga v Republic (Criminal Revision E129 of 2024)
[2024] KEHC 12826 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12826 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E129 OF 2024
LM NJUGUNA, J
OCTOBER 23, 2024**

BETWEEN

PATRICK MUNYOKI MUTUNGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed a notice of motion dated 22nd May 2024 seeking the following orders:
 - a. That this honourable court be pleased to reverse the sentence awarded by the lower court in Siakago Criminal Case no. E481 of 2021 and grant an option of a fine; and
 - b. That this honourable court be pleased call for and examine the trial court records in Siakago Criminal Case no. E481 of 2021.
2. The applicant was charged with the offence of being in possession of narcotic drugs contrary to section 3(1) as read together with section 3(2) of the *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994. He pleaded guilty and he was convicted on his own plea of guilty. He was sentenced to 8 years imprisonment and now he urges this court to revise this finding because he saved the court's time by pleading guilty. He stated that he is remorseful and urged the court to give him a non-custodial sentence or a fine.
3. The respondent filed grounds of opposition, stating that the applicant's mitigating factors do not form basis for revision of the sentence under section 362 of the *Criminal Procedure Code*. It urged the court to dismiss the application stating that the same is bad in law.
4. The application was canvassed by way of written submissions.
5. The applicant submitted that the trial court ought to have imposed a lesser sentence given that he is a first offender who pleaded guilty and saved precious judicial time. He relied on the provisions of section



- 3 of the *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994 and urged the court to revise the sentence since there is a provision for a fine and shorter imprisonment term. That he was found in possession of bhang worth Kshs.5,400/= and he has spent more than 3 years in prison for the offense. He prayed that the court grants him a noncustodial sentence so that he can attend to his family.
6. The respondent submitted that this court should focus on considering the correctness, validity and propriety of the orders of the court. It argued that according to section 3 of the *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994, the recommended sentence is 20 years imprisonment but the trial court was lenient enough to sentence him to 8 years imprisonment. That the application does not meet the threshold for revision and it urged the court to dismiss it.
 7. From the foregoing, the issue for determination is whether this court has the power to review the sentence meted out to the appellant.
 8. The High Court's supervisory jurisdiction in criminal cases is established under Section 362 of the *Criminal Procedure Code* as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
 9. In the Malaysian case of *Public Prosecutor v. Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735 it was held:

“The powers of the High Court in revision are amply provided under section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.
 10. The applicant was sentenced to 8 years imprisonment having been convicted on his own guilty plea. In mitigation, he stated that he sells the substance as the only business he knows to do to fend for his family. Section 3(1) and (2)(a) of the *Narcotic Drugs and Psychotropic Substances Control Act* Cap 245 provides;
 - “(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.
 - (2) A person guilty of an offence under subsection (1) shall be liable—
 - (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years”



11. In this case, the applicant was not using the substance for his personal use thus the sentence imposed should be as prescribed in the above cited provision. The provision is silent on offenders who sell the substance and who did not indicate to the court that they possessed the substance for their own personal use. I find that, in the premises, the trial court did not err in imposing the sentence of 8 years imprisonment.
12. The application has no merit and it is hereby dismissed.
13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF OCTOBER, 2024.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent

