



**Mariko v Republic (Criminal Revision E061 of 2024)
[2024] KEHC 11924 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E061 OF 2024
RB NGETICH, J
OCTOBER 3, 2024**

BETWEEN

ISAAC MBAI MARIKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Isaac Mbai Mariko was charged with two counts of offences before the trial court. Count I was the offence of being in possession of Narcotic drugs and psychotropic substances contrary to section 3(1) as read with section 3(2)(a) of *Narcotic drugs and psychotropic substances control Act* No.4 of 1994. The particulars of the charge were that the accused on the 8th day of November, 2019 at Makutano village in Koibatek Sub- County within Baringo County, was found being in possession of narcotic drugs and psychotropic substances namely cannabis sativa(bhang) to with 5 big rolls with a street value of Kshs.1000/= which was not in its medicinal preparation form.
2. Count II was the offence of storage of petroleum products without a licence contrary to section 80(1) as read with section 80(5) of *Energy Act* cap 314 Laws of Kenya. The particulars of the charge were that the accused on the 8th day of November,2019 at Makutano centre in Koibatek Sub- County within Baringo County was found storing petroleum product namely diesel to wit 125 litres packed in a 70-litre plastic container and three 30 liters plastic jerrycans without a valid licence.
3. The Applicant denied both charges and after trial by judgment delivered on 30th August,2023, the applicant was found guilty for the two counts, convicted and fined Kshs.100,000/= in default 12 months imprisonment for each count.
4. The Applicant has now approached this court vide an application dated 8th July,2024 seeking review of sentence. He prays for probation sentence or community service order for the remaining period of sentence. The application is brought under Article 165(3)(a), 22,23,50(1), 50(2), 159 and 259 of the



Constitution of Kenya, section 362, 363 and 364(b) of the Criminal procedure Code and probation of offender's Act.

5. The applicant avers that his health status deteriorates day by day since he was diagnosed with an umbilical swelling as per the medical report attached. He avers that his condition requires urgent surgery and medical attention which is not possible with continued stay in custody and that he is remorseful and repentant of what happened. He prayed for another chance and promises not repeat the offence.
6. When the matter came up for hearing on 18th July,2024, the prosecution counsel Ms. Omari prayed for social inquiry to be done and report availed.

Social Inquiry Report

7. The social inquiry report was filed on the 6th July,2024. From the report, the Applicant is 59 years old. He dropped out of school and started practicing farming for a living. He owns 2 acres piece of land and at the time of arrest, he was operating a small hotel business at Makutano trading Centre. He is married with three children.
8. Social inquiry done reveal that the applicant is a repeat offender with previous convictions in E1534/2021, E756/2022, and [283/2018].The applicant admits committing the offence and pleads for forgiveness and mercy from this court. He admits his mistake and the gravity of his actions. He has shown willingness to reform. The prisoner cites ill-health while in prison. He pleads with this court for leniency while considering review of his sentence.
9. The area administrator stated that the applicant served 3-year term as a village elder and was of good conduct. Members of the community and his neighbors also spoke well of the applicant; they stated the applicant maintained good relations with his neighbors and other members of the community and that he was a hardworking farmer and a businessman who took care of his family. The applicant's wife of 25 years spoke well of him.
10. Despite the positive sentiments given concerning the applicant, the probation officer found that he had previous convictions being cr. E1534/2021 Failing to comply with the provision of the forest conservation and management Act No. 34 of 2016 contrary to sec 67(1) (a) as read with, sec 68(1) (C) of the forest conservation and management Act No. 34 of 2016 and was fined Kshs 3000. I/D 1month imprisonment, Cr. E756/2022]-Contravening a measure c/s 140(b) of the environment management act where he was fined 3000 I/D 1 month and Cr.283/2018 Being in possession of Narcotics which was withdrawn.

Response By State

11. The prosecution counsel Ms. Omari submitted that the trial court was very lenient in sentencing the accused who was charged with 2 counts of offences and from the social inquiry report, the accused is a repeat offender and the trial court had also noted that he was a repeat offender and was not fit for non-custodial sentence though he said to be ailing.

Applicant's Response

12. In a rejoinder, the applicant stated that he has been sick in prison and he is seeking court's assistance so that he can be treated at home. He stated that he is remaining with 3½ months to complete the sentence and that he is 62 years old.



Determination

13. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the [Criminal Procedure Code](#).
14. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct."

15. I have taken into consideration sentiments by the local administration and applicant's family. They talk good of the applicant and are for his release to serve the remaining sentence within the community. I however note that the applicant has 3 previous convictions and he still has a period of three and half years to complete sentence. In view of the applicant's previous convictions, I am of the view that rehabilitation while in custody may be appropriate for the accused. From the foregoing, I decline to revise applicant's sentence.
16. Final Orders: -
Application for revision/review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 3RD DAY OF OCTOBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

CA Karanja.

Ms. Omari for state.

Applicant Present.

