



REPUBLIC OF KENYA



**Wangari v Republic (Criminal Revision E240 of 2022)  
[2023] KEHC 2486 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2486 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E240 OF 2022  
GL NZIOKA, J  
MARCH 24, 2023**

**BETWEEN**

**JOSEPH KARANJA WANGARI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned before the Chief Magistrate's Court at Naivasha charged vide Criminal Case. No. E1393 of 2022, with the offence of being in possession of Narcotics Drugs contrary to section 4 (a) (ii) of the *Narcotic Drugs and Psychotropic Substances Control Act* 4 of 2022. The particulars of the charge are as per the charge sheet.
2. He pleaded guilty was convicted and sentenced to pay a fine of Kshs 80,000.00 or serve a term of one (1) years imprisonment. He now seeks for review of the sentence vide the application herein, filed on December 28, 2022.
3. The application is supported by the mitigation grounds and affidavit of the applicant wherein he avers that he is a first offender, pleaded guilty to the charges, is remorseful and has learnt to be a law abiding citizen. That he is from a poor family background and would like to use his skill in catering to his benefit and building the nation.
4. The Respondent did not file a responds to the application despite being granted an opportunity to do so and therefore the application is unopposed.
5. The Probation Department filed a report dated; March 10, 2023 which indicates that the applicant is 23 years old, his father is deceased while his mother is a casual labourer. He is the first born of three (3) siblings. That he separated from his wife but has one daughter aged 3 years.



6. That he dropped out of secondary school after his parents separated and has no formal job. Further he admits to the use of bhang but states that he is being rehabilitated and that he has learnt his lesson, takes full responsibility for the offence and prays for leniency.
7. The applicant's mother attributes his arrest to his association with delinquent peers but believes that the he has been rehabilitated during his five (5) months in custody. The applicant is currently deployed at the firewood section and has acquired skill in beadwork that he plans to use earn income if released. Further he has no record of indiscipline in prison.
8. The probation report states that he has been in custody for five (5) months with his expected date of release being June 5, 2023 and recommends that the applicant be granted community service order for the remaining two (2) months of his sentence.
9. The revisionary power of the High Court is provided for under sections 362 of the [Criminal Procedure Code](#) which states 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.”

10. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
11. In the instate matter the applicant is convicted and sentence over an offence under section 4 (a) (ii) of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#), which states as follows: -
  - ” Any person who trafficks in, or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her to be a narcotic drug or psychotropic substance, shall be guilty of an offence and liable—
    - (a) in respect of any narcotic drug or psychotropic substance—
    - (ii) where the person is in possession of more than 100 grams, to a fine of not less than fifty million shilling or three times the market value of the narcotic psychotropic substance, whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment,
12. The sentence meted is lawful however, taking into account the fact that the applicant is a first offender, he pleaded guilty saving court's scarce period and the favourable pre-sentence report I order he be released on the period served.
13. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 24<sup>TH</sup> DAY OF MARCH 2023**

**GRACE L. NZIOKA**

**JUDGE**

**In the presence of;**



Appellant present in person, in court virtually

Mr. Atika for the Respondent

**Ms Ogutu: Court Assistant**

