



**Gichimbi v Republic (Criminal Revision E010 of 2024)
[2024] KEHC 14764 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL REVISION E010 OF 2024
RM MWONGO, J
NOVEMBER 21, 2024**

BETWEEN

MERCY WANGU GICHIMBI APPLICANT

AND

REPUBLIC RESPONDENT

*(Arising from the Original Conviction and Sentence in Kerugoya CM'S
Court Criminal Case No. E270 of 2023 by Hon. Cheruto C. Kipkori (PM))*

JUDGMENT

1. The applicant was charged with the offence of trafficking in Narcotic Drugs viz 200 gms cannabis sativa, 100 small rolls, 10 large rolls cannabis rolling stick and a rizzler paper contrary to Section 4(a) of the *Narcotic drugs and Psychotropic Substances Control Act* No 4 of 1994. After hearing she was convicted and sentenced on 31st August, 2023 to serve 10 years or to a fine of Kshs 1 million.
2. The Applicant now moves this Court for resentencing on the grounds that:
 - 1) That she was a first offender and ignorant at the time of the offence.
 - 2) That she is remorseful and regrets her actions.
 - 3) That she is old with a deteriorating health.
 - 4) That she does not challenge the conviction.
3. Submissions were filed duly by the respondent



Respondent Submissions

Jurisdiction on sentence review

4. The state submits that this Court's powers to review sentence are premised on Article 165 of the [Constitution](#) and Section 362 of the [Criminal Procedure Code](#).

Whether the applicant can benefit on a Sentence Review

5. The DPP states that this Court should invoke Section 362 of the [Criminal Procedure Code](#) to call and examine the record from the subordinate Court for purposes of satisfying itself as to the correctness of the sentence and the fine of Kshs 1 million. It is submitted that the charges the applicant is charged with does not attract leniency because of the effect the drugs would have had had it been released to the market.
6. However, the DPP points out that this Court has powers to examine the sentence and the fine imposed by the subordinate Court and to render appropriate sentence as held in [Vincent Opiyo Omondi v Republic](#) [2021] eKLR. There, the Court varied the sentence by adding a fine of 270,000/= to the imprisonment sentence.

Whether the applicant is remorseful and rehabilitated

4. The state submits that this Court do order for a probation report and the Doctors report to ascertain the social condition surrounding the applicant and her health status in order to guide the court appropriately.

Issues for Determination

8. The issues for determination are as follows:
 1. Whether this Court has Jurisdiction to hear and determine the application of a Sentence review.
 2. Whether the applicant can benefit from a sentence review.
 3. Whether the applicant is remorseful and rehabilitated.

Analysis and Determination

Jurisdiction to hear and determine the application of a Sentence Review Status

9. There is no doubt that this Court has powers to review sentence. These powers are premised on Article 165 of the [Constitution](#) and Section 362 of the [Criminal Procedure Code](#). The former provides:

“The High court has supervisory jurisdiction over subordinate Courts and over any person, body or authority exercising a judicial, or quasi-judicial function, but not over a superior Court”.
10. Section 362 of the [Criminal Procedure Code](#) on the other hand provides that:

“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.”

Whether the applicant can benefit from a sentence review

11. The Applicant was charged under Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* which provides that:

“Any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him 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 to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or
- (b)

12. In the present case, the Applicant was sentenced to serve 10 years’ imprisonment and to pay a fine of Kshs 1 million. Under Section 364 of the *Criminal Procedure Code*, the court is conferred with the powers to set aside an illegal sentence and substitute the same with a proper sentence.

13. The respondent submits that the charges the applicant is charged with do not attract leniency because of the effect the drugs would have, had they been released into the market. Reliance was placed in a similar ruling in: *Vincent Opiyo Omondi v Republic* [2021] eKLR where it was stated:

“It is my view that this being of a case of trafficking narcotic drug, the Applicant is not entitled to leniency. This is more so because, had the drug been released to the market, it would have had great health and psychosocial adverse effect on the consumers. Rather than be released, the Applicant should remain in jail so that the sentence can serve as a deterrence.”

14. According to the respondent, the applicant was properly sentenced by the trial court in the present case.

Whether the applicant is remorseful and rehabilitated & other relevant matter

15. The applicant seeks resentencing on the grounds that she has been rehabilitated, is remorseful, and seeks leniency. Further, she is old at 54 years and is sick. The Prison Medical Report dated 24th October, 2024 indicates that the applicant suffers from HIV and hypertension. She requires constant medication to stabilize her blood pressure. The Prison Report dated 23rd February, 2024 confirms that the applicant has been rehabilitated and is proper candidate for remission of sentence.

16. The Probation Officer’s Report dated 16th October, 2024 gives a detailed history of the applicant noting that she led a normal life prior to her arrest with no history of illegal drug or alcohol abuse. It recommends for a non-custodial sentence and proposes that the applicant serve three years Community Service under the supervision of the County Probation Officer.

17. The Court notes that the applicant has been in prison for over one (1) year and has been rehabilitated. Taking into account the age and ill-health of the applicant, and noting that she has not had a history of engagement with drugs, it is my opinion that she be resentenced to a non-custodial sentence.



Conclusion and Disposition

18. Accordingly, I hereby review the applicant's sentence on humanitarian grounds and substitute her 10 years sentence with a non -custodial sentence under the following conditions:
- a) The applicant shall serve a non-custodial sentence of three (3) years under Community Service Order at Kirinyaga County Commissioner's building under the supervision of the County Probation Officer.
 - b) The applicant shall undergo counselling for at least 8 months on such topics and in such programmes designed and facilitated by the said Probation Officer.
 - c) The said programs shall be in writing and the applicant's regular participation shall be noted therein.
 - d) In the event of breach of any condition (s) herein or defiance of any order issued by the Probation Officer, the sentence herein shall vacate and the same shall be reviewed by this court.
19. Orders accordingly.

DATED AT KERUGOYA THIS 21ST DAY OF NOVEMBER ,2024

R. MWONGO

JUDGE

Delivered in the presence of:

Mamba for the State

Applicant Present in Court

Murage, Court Assistant

