



**Nyambane v Republic (Criminal Appeal E019 of 2023)
[2024] KEHC 15216 (KLR) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E019 OF 2023
DR KAVEDZA, J
DECEMBER 3, 2024**

BETWEEN

EDISON TANGI NYAMBANE APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence
delivered on 23rd November 2023 at Kibera Chief Magistrate's Court
Criminal No. E1003 of 2023 Republic vs Edison Tangi Nyambane)*

JUDGMENT

1. The appellant was convicted and sentenced to 5 years imprisonment for the offence of being in possession of Narcotic drugs contrary to section 3 (1) as read with section 3 (2) of the [Narcotic drugs and psychotropic substances control Act](#) No. 4 of 1994.
2. The record of the proceedings shows that the appellant pleaded guilty to the charge and after the facts were read out he replied: "ni ukweli". The trial court then recorded that "plea of guilty entered". The record then shows that the accused made a statement in mitigation and the court said "There is rise in offences of such nature and we need to eradicate these habits."
3. In his Petition of Appeal the appellant raised the issues: The learned trial magistrate erred in law and fact in failing to explain to the accused person the penalty/veracity of the offence before recording a plea for the appellant. The appellant therefore prayed that the appeal be allowed, conviction quashed, sentence set aside and the appellant be set at liberty.
4. From the record of the trial court, it is evident that the appellant pleaded guilty during the defence hearing and did not testify. By doing so, he saved the court considerable time by avoiding the need to take his evidence and draft a comprehensive judgment. In light of this, the appellant was entitled to



an incentive when it came to sentencing, as his guilty plea expedited the proceedings and contributed to judicial efficiency.

5. In my view, the sentence of five (5) years imposed on the appellant is excessive, particularly when considering the value of the cannabis sativa that was recovered. The nature and quantity of the substance involved should be weighed in determining an appropriate sentence. Given these factors, the sentence seems disproportionate to the circumstances of the case.
6. For that reason, I hereby set aside the sentence of five (5) years imprisonment and substitute it with an order of probation for a period of fifteen (15) months under supervision of Kibera Probation Office.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 3RD DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant absent

Mburugu for the Respondent

Achode Court Assistant

