



**Odongo v Republic (Criminal Revision E074 of 2024)
[2024] KEHC 15189 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E074 OF 2024
RN NYAKUNDI, J
DECEMBER 3, 2024**

BETWEEN

ALLAN ODONGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of being in possession of Cannabis Sativa contrary to section 3(1) as read with section 3(2) (9) of the [Narcotic Drugs and Psycotropic Substance Control Act](#), No 4 of 1994. The particulars of the offence were that on 29th July, 2023 at Shauri estate in Turbo sub-county within Uasin Gishu County was found in possession of narcotic drugs namely Cannabis Sativa (Bhang) to wit 20 rolls (120 grams) with street value of Kshs 1,000/= in contravention of the said Act.
2. The applicant pleaded guilty to the offence before and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 2 years in prison.
3. The applicant has approached this court pursuant to sections 357, 362, 364 & 382 of the [Criminal Procedure Code](#) as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a) & (b) of the [Constitution](#).
4. The applicant seeks a sentence review to non-custodial sentence.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.



- c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
6. The nucleus of any correctional system is its rehabilitative and reparative functions and in the famous words of Lord Hewart, Justice must not only be done, but must also be seen to be done". This dictum was laid down in the case of *Rex v Sussex Justices*, [1924] 1 KB 256. The empirical evidence in this matter shows that the offender has been rehabilitated and is reformed, ready for re-integration into the society.
7. In view of the foregoing, I am persuaded that this is a fit case for a non-custodial sentence. As a consequence, I direct that he serves a probation sentence for the remaining period. Monthly reports shall be filed in court by the probation officer in ensuring compliance. This court emphatically notes that any breach of the stipulated probation conditions may result in the immediate reinstatement of custodial sentence for the remaining period

SIGNED, DATE AND DELIVERED AT ELDORET THIS 3RD DAY OF DECEMBER 2024.

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R. NYAKUNDI

JUDGE

