



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

CRIMINAL REVISION NO. E008 OF 2021

REPUBLIC.....APPLICANT

VERSUS

MW.....RESPONDENT

(Being a Revision from Original Conviction and Sentence in Naivasha CM's Criminal Case No. E907 of 2021 by Hon. Y. Barasa (SRM)).

RULING

1. The Subject was charged with being in possession of bhang contrary to **Section 3 (1)** as read with **Section 3 (2)** of the **Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994**. The particulars of the offence were that on the 2nd June, 2021 at Gilgil Township in Gilgil Sub-County within Nakuru County, she was found in possession of substance suspected to be Cannabis Sativa (bhang) to wit seven (7) rolls which was not medically prepared with a street value of Kshs 560/=.
2. The Subject was convicted on her own plea of guilty. And after a Probation Officer's Report was presented in court she was sentenced to 3 years on probation after being found to be pregnant. Subsequent to sentencing the Probation Officer recommended that after she gave birth she would be admitted at Siaya Borstal Hostel. It was upon disclosure that the Subject was pregnant, that the learned trial magistrate directed that the file be placed before the High Court for review of the sentence.
3. Before me, was Ms. Maingi for the Applicant. She made a request in her submission that the Subject be released from remand under probation to complete the sentence. Ms. Maingi informed the court that the mother to the Subject was also a drunkard which would make it difficult to release the Subject to her. She opined that the mother would not be able to take care of her in her state or follow up to make sure she goes to school after delivery. The court informed the prosecution to reach out to a Probation Officer who would in turn reach out to the mother of the Subject to discuss the welfare of the subject.
4. It was the view of this court that since the Subject had spent five (5) months in remand, substituting the sentence and releasing her on probation would further aggravate her situation because she had overstayed in remand in very unfortunate circumstances.
5. Thereafter, the Probation Officer Ms. Teresia informed the court that she had had a discussion with the mother of the Subject who attended subsequent court proceedings and who was willing to take care of the Subject by sustaining her and ensure that she goes back to school after delivery.
6. The Probation Officer also informed the court that she had reached out to the Children's Officer, one Mr. O of Gilgil Sub-County who committed to take care of the subject and ensure that she goes back to school after delivery.
7. I have considered the facts of the case and the background check of the Subject informed by a Probation Officer's Report dated 4th November, 2021. It is clear that the Subject found herself in the situation that she is in because of lack of proper parental guidance. More so, because her mother is said to live off selling illegal brews. Nevertheless, the mother has accepted the situation of the Subject and the Subject too is willing to reform. The view of this court is that the Subject who is 15 years should be given an opportunity to reform especially now her mother is willing to guide her.
8. She has been in custody since June 2021 and her attitude towards change is positive. Being pregnant is the flip side of her life. But the court is of the view that with proper guidance she can be able to go back to school after delivery. It is therefore prudent in the circumstances that the five (5) months plus that she has been in custody be sufficient deterrence.
9. In the premises, I hereby order that the Subject be forthwith released from prison to her mother DW. The Children's Officer Gilgil Sub-County, Mr. Osoro is advised to keep an eye on her to ensure that she goes back to school after delivery. The order should be served upon

him for reference and execution of the order.

DATED AND DELIVERED AT NAIVASHA THIS 11TH DAY OF NOVEMBER, 2021

G. W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Ms Maingi for the Applicant

2. M.W. the Respondent