



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITUI**

**HCCR.REV. NUMBER 6 'B' OF 2020**

**REPUBLIC.....APPLICANT**

**VERSUS**

**MALIK JOHN KYALO.....RESPONDENT**

**R U L I N G**

1.The **Applicant** herein, **Malik John Kyalo** was charged together with **Alexander Mutua Titus** (Co-accused) *vide* **Kitui Chief Magistrate's Court Criminal Case No.1235 of 2019** with the offence of being in possession of Narcotic Drugs contrary to **Section 3(1) (a)** of the **Narcotic Drugs and Psychotropic Substances Act No.4 of 1994** with particulars being that on the 9<sup>th</sup> December 2019 at Kitui Township the **Applicant** and his co accused were jointly found in possession of Narcotic drugs to wit one stone of bhang in a box.

2. The **Applicant** and his co accused both pleaded guilty to the charge and the facts and were convicted on their own plea of guilty. The two were sentenced to each serve 4 year imprisonment.

3. The **Applicant** has now moved this court for revision stating that he should be given a non custodial sentence because of his remorsefulness and that he has 2 children in school who require his material support.

4. I have considered this application and in particular the fact that the High Court at Machakos *vide* **Kitui H.C. Revision NO.121 of 2020** revised the sentence of his co-accused to a suspended sentence of one year after her move this court for revision of his sentence. I have also looked at the **Applicant's** probation report and find that the same is favourable to him serving a non-custodial sentence.

5. In the premises I find merit in this application when especially at this time when the Covid 19 Pandemic has made it hard for prison facility to cope with large number of prisoners and maintain or keep health protocols as provided by the Ministry of Health guidelines. This Court hereby in exercise of its powers under **Article 165 (b)** of the Constitution reduces the 4 year to sentence to one year non custodial sentence. The **Applicant** shall serve one year Community Service at a public institution as directed by the Probation Officer other than a school or any other learning institution. He will be supervised by the Kitui Probation Officer whom he shall report to forthwith upon his release from prison and after all the Public Safety Guidelines from the Ministry of Health have been adhered to by G.K. Prison Kitui.

**Dated, Signed and Delivered at Kitui this 3<sup>rd</sup> day of November, 2020.**

**R. K. LIMO**

**JUDGE**