



**Mutinda v Republic (Criminal Appeal E040 of 2024)  
[2025] KEHC 14890 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14890 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E040 OF 2024  
KW KIARIE, J  
OCTOBER 23, 2025**

**BETWEEN**

**CATHERINE NZILANI MUTINDA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case NO. E367 of 2024 of the Chief Magistrate’s Court at Makueni by Hon. P.N. Gesora–Chief Magistrate)*

**JUDGMENT**

1. Catherine Nzilani Mutinda, the appellant herein, was convicted after pleading guilty to the offence of being in possession of narcotic drugs contrary to section 3 (1) as read with section 3 (2)(a) of the Narcotic Drugs and Psychotropic Substance Act No.4 of 1994.
2. The particulars of the offence are that on the 9<sup>th</sup> day of June, 2024, at Katoloni village, Makueni sub-County within Makueni County, she was found in possession of 150 rolls of cannabis sativa (bhang) with a street value of Kshs 7500, which was not in medicinal preparation form.
3. The appellant was sentenced to three years’ imprisonment. She was aggrieved and filed this appeal against both the conviction and the sentence. She was in person and raised grounds of appeal as follows:
  - a. The learned trial magistrate grossly erred in law and fact, failing to consider that the appellant’s plea of guilty could have been a result of coercion and other matters.
  - b. The trial court erred in law and fact by failing to consider that the appellant was not given enough time by the trial court, thus denying her right to a fair hearing.
  - c. The sentence passed against the appellant was manifestly oppressive, considering the facts and circumstances of the case.



4. The state did not oppose the review of the sentence.
5. This is a first appellate court. As expected, I have re-analysed and re-evaluated all the evidence presented before the lower court, and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
6. No facts support the appellant's contention that she pleaded guilty due to coercion. This ground has no basis. The appeal was properly taken, and she informed the trial court that she was a bhanga peddler. This contradicts her claim that she was misled into pleading guilty.
7. Section 348 of the Criminal Procedure Code provides as follows:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

I will, therefore, endeavour to establish the legality of the sentence, bearing in mind that an appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James Vs. Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R Vs. Shershewcity* (1912) C.CA 28 T.LR 364.

8. Section 3 (2) (a) of the Narcotic Drugs and Psychotropic Substance Act No.4 of 1994 provides as follows:

A person guilty of an offence under subsection (1) shall be liable—

- a. in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and

9. Since the appellant was a first-time offender, she should have received an alternative sentence. I set aside the sentence imposed by the learned trial magistrate. She has already served more than one year in prison. The period she has served is substituted as her sentence, which I consider to be an appropriate punishment.

**DELIVERED AND SIGNED AT MAKUENI, THIS 23<sup>RD</sup> DAY OF OCTOBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

