

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL PETITION NO. E023 OF 2025

HUMPREY OMONDI OPONDO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Petitioner was charged with the offence of trafficking in Narcotic drugs contrary to Section 4 (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act, Act No. 4 of 1994. He pleaded not guilty and after a full trial convicted and sentenced to serve twenty-two (22) years imprisonment in addition to payment of a fine of Kshs. 15,000,000 in default to serve 12 months imprisonment. His appeal against before this court was dismissed on 23rd April 2024. The custodial sentence was however reduced to twelve (12) years imprisonment.
2. The petitioner has now approached this Court by way of a constitutional petition seeking an order for resentencing. He contends that the mandatory nature of the sentence prescribed under Section 4 (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act, Act No. 4 of 1994 is unconstitutional. He now invokes sections 216 and 329 of the Criminal Procedure Code (Cap. 75, Laws of Kenya), urging the Court to consider his mitigation and release him.
3. The issue for determination is whether the sentence imposed upon the petitioner is unconstitutional and whether there exists a basis for resentencing. The petitioner was sentenced under Section 4(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act, which grants the court discretion to impose both a

custodial term and a fine depending on the quantity and value of the drugs trafficked. The record shows that the trial court exercised its discretion within the statutory limits, and this Court, on appeal, already reviewed and reduced the custodial sentence from twenty two (22) to twelve (12) years.

4. While the petitioner contends that the sentence is mandatory and therefore unconstitutional, this Court finds no merit in that argument. The provision does not prescribe a mandatory sentence but a discretionary range that allows the court to consider the circumstances of each case.
5. The petition is therefore without merit and is dismissed accordingly.

Orders accordingly.

**Judgement dated and delivered this 22nd day of
October 2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Petitioner Present
Mutuma for the Respondent
Karimi Court Assistant.