



**Shomari v Republic (Criminal Petition E024 of 2025)
[2025] KEHC 15168 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL PETITION E024 OF 2025
DR KAVEDZA, J
OCTOBER 22, 2025**

BETWEEN

ABDALLAH MOHAMED ABDALLAH SHOMARI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

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 thirty (30) years imprisonment in addition to payment of a fine of Kshs. 35,535,960 in default to serve 12 months imprisonment. His appeal against before this court was dismissed on 30th September 2024. The custodial sentence was however reduced to fifteen (15) 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 due to his chronic illness.
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 thirty (30) to fifteen (15) 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. The petitioner's claim based on ill health equally lacks merit, as illness is not a ground for setting aside a lawful sentence.
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.

