

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION NO. E329 OF 2025

DENNIS MWANGI GITONGA
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Sidi Kirenge for the State

RULING

1. The Applicant was charged with being in possession of cannabis sativa (bhang) contrary to Section 3(1) as read with Section 3(2)(a) of the narcotic drugs Psychotropic Drugs Substance Control Act Amended Act of 2022. The brief facts of the particulars are that on the 30th day of May 2025 at Milimani Area Kapseret Sub County within Uasin Gishu County was found in possession of narcotic drugs namely cannabis (bhang) to wit twenty (20) rolls weighing 14 grams valued at seven hundred shillings (Ksh 700) in contravention of the said Act.
2. The Applicant was convicted on own plea of guilty and was sentenced to serve 2 years' imprisonment on 10th July 2025.
3. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC. As a consequence of that the Probation Officer filed a Sentence Review Report dated 20th November 2025 which had the following components:

Introduction and sources of information

This sentence review report in respect of Dennis Gitonga Mwangi, who is currently serving a Twoyear custodial sentence for the offence of Possession of narcotic drugs c/s Section 3(1) of the Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994.

The report is informed by findings from social inquiry interviews and an assessment undertaken to evaluate his suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret GK Prison, his family members. In addition, the lower court file was perused.

Current home and personal circumstances

The inmate is the son of James Kamau and the late Grace Wanjiru. The family resides in Kipkenyo area of Kapseret Sub- County. He is the third-born in a family of four children: Stephen Kamau, Mary Mombi, and Vision Mwinami. The two older siblings are adults living independently, while the youngest is currently a Form Two student in secondary school. The household is of low socio-economic status, with limited resources and financial stability. The inmate left school at the primary level and has since relied on casual labour for his livelihood. Prior to his arrest, he was engaged in selling mitumba in various markets within the region. He is single and has no dependents.

These circumstances indicate a moderate and financially constrained home environment, with the inmate having minimal social responsibilities but significant need for structured support to stabilize his life and prevent future offending.

Prison rehabilitation

While in custody, the inmate has been actively involved in the prison activities, working in the prison senior quarters. This role has instilled discipline, accountability, and a strong sense of personal responsibility. These skills are expected to support his rehabilitation and enhance his chances of leading a productive and honest life if granted a non-custodial sentence.

Offenders' attitude and impact of imprisonment

The inmate has demonstrated remorse for his involvement in the offence of possessing narcotic drugs.

He reports that his time in custody has given him an opportunity to reflect on his choices and the consequences they have had on his

life. Through this experience, he has come to appreciate the importance of personal accountability and making responsible decisions. He further acknowledges that negative peer influence played a significant role in his offending behaviour and expresses a strong commitment to distancing himself from such associations in the future.

Conclusion

Your Lordship, the inmate is a 23-year-old young man who remains well within the stage of life where meaningful rehabilitation is highly achievable. Although sentenced to two years' imprisonment for the offence of possession of narcotic drugs, he has already served four months in prison and had spent an additional two months in remand custody. He has demonstrated remorse and acknowledges the negative impact of his choices, particularly the influence of peers and poor decision-making. He now expresses a desire to reform and seeks an opportunity to rebuild his life.

Given his young age, his rehabilitative attitude, and the insight he has gained during his time in custody, there is a favourable prognosis for successful reintegration. A non-custodial sentence would allow for close supervision, targeted rehabilitation interventions, and meaningful community support to address the underlying factors contributing to his offending.

Recommendation

In view of above findings, we recommended that the inmate may be afforded an opportunity to complete the remainder of his sentence under a non-custodial arrangement, where his potential for positive change can be effectively nurtured. He may serve community service order (CSO) at Kipkaren police station for the remaining period of 11 months.

Decision

4. This application is based on the provisions of the Criminal Procedure Code namely Section 357, 362, 364 as read with 382. The constitution also provides under Art 50 (2) (p) (q) as follows:

(p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and

(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

(3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.

5. The same constitution in Art 50 (6) (a) (b) expressly states as follows:

A person who is convicted of a criminal offence may petition the High Court for a new trial if-

(a) The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and

(b) new and compelling evidence has become available.

6. This application is based on the sentence review report dated 20th November 2025 as summarized above. I take note that the role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:

*(a) **Retribution:** to punish the offender for his/her criminal conduct in a just manner.*

*(b) **Deterrence:** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*

- (c) **Rehabilitation:** to enable the offender reform from his/her criminal disposition and become a law-abiding person.
- (d) **Restorative justice:** to address the needs arising from the criminal conduct such as loss and damages.
- (e) **Community protection:** to protect the community by incapacitating the offender.
- (f) **Denunciation:** to communicate the community's condemnation of the criminal conduct.
- (g) **Reconciliation:** To mend the relationship between the offender, the victim and the community.
- (h) **Reintegration:** To facilitate the re-entry of the offender into the society.

7. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: *First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).*
8. It came out clearly from his research; *Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the*

determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).

9. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and laxed supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
10. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the considered view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking, over time I have been involved in the practice of law as a trier of criminal cases they are no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
11. In the instance case, I am hopeful that the review of custodial sentence imposed and substitution of it with that of community service order to be performed at Kipkaren Police Station for the remaining

period of 11 months will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer/community service officer is a variation of the Applicant's sentence to a Community Service Order from the two (2) years' custodial sentence imposed. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 26TH DAY
OF NOVEMBER, 2025**

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**R. NYAKUNDI
JUDGE**