



**Muhotho v Republic (Criminal Revision E349 of 2025)  
[2025] KEHC 17294 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17294 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E349 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 26, 2025**

**BETWEEN**

**PATRICK MUHOTHO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with being in possession of narcotic drugs contrary to Section 3(1) as read with Section 3(2) (a) of the Narcotic and Psychotropic Substance Control Act No. 4 of 2022. The particulars are that on the 5<sup>th</sup> day of May 2025 at Mangula area-Eldoret City in Turbo Sub-County within Uasin Gishu County was found being in possession of 100 grams of Cannabis (bhang) with a street value of Kshs. 200 = which was not in medical preparation form.
2. The Applicant pleaded guilty, was convicted and was fined Kshs. 20,000 = in default to serve 12 months' imprisonment on 2<sup>nd</sup> October 2025.
  1. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the Criminal Procedure Code. As a consequence of that the Probation Officer filed a Sentence Review Report dated 21<sup>st</sup> November 2025 which had the following components:

**A. Introduction and sources of information**

This is a sentence review report concerning Patrick Muhotho who was sentenced to four years in prison for the offence of Being in possession of narcotic drugs contrary to section 3(1) of the Narcotic and Psychotropic Substances Control Act No. 4 of 1994 as read with section 3(2) (a) of the Narcotic and Psychotropic Substances (Control) (Amendment) Act 2022. The report is based on findings from social inquiry interviews and a general assessment aimed at determining the inmate's



suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret GK Prison, his mother Selina Nyambura, his sister Mary Wambui, and the local area administration. Additionally, the lower court file was reviewed.

## **B. Current home and personal circumstances**

The inmate is the son of the late John Njenga and Selina Nyambura who is a peasant farmer in Gilgil. He is the third born in a family of seven siblings namely; Mary Wambui- vegetable vendor in Kapsabet, David Kinuthia- businessman in Nairobi, Peter Karegi- businessman in Subukia, Lucy Wambui-recently completed her high school education, Esther Njeri- form three student in Ngechu Secondary School and Jane Gathoni- grade nine student in Kanyiriri Primary School. The inmate attended Kapsabet Township Primary school up to class four and he later went to stay with his grandmother in Nakuru where he dropped out while he was in class seven due to lack of interest in education. Inmate separated with his spouse Catherine Ann and together they were blessed with one child who stays with his mother. He was engaged in casual jobs within Eldoret town prior to his incarceration. His mother and sister described him as well- behaved, responsible person and has close family ties. The family members were shocked to learn the inmate was incarcerated and it was the first time the matter has come to their attention. They are ready to welcome him back and expressed willingness to support his home-based rehabilitation. The inmate has ulcers and the family members confirmed the same. The inmate is not known by the area local administration as well as the village elders.

## **C. Prison rehabilitation**

The inmate was involved in cleaning activities while in prison and he has not acquired any other skills. His family believes that he has reformed and they are ready to received him back. Thus, they prayed that the court hands him a non-custodial sentence for the remainder of his term. None of the family members visit the inmate since it was the first time the matter has come to their attention.

## **D. Offenders' attitude and impact of imprisonment**

The inmate prayed for forgiveness and is willing to perform community service for the remainder of his term. He also reported to have reformed during the period served and committed to become a law-abiding citizen upon release.

## **E. Conclusion**

Your Lordship, the inmate is 25 years old and a class seven dropout. He is engaged in cleaning activities at prison. He reported to be having ulcer problem and was engaging in casual jobs prior to his incarceration. His family members were shocked to learn that the inmate was incarcerated and it was the first time the matter has come to their attention. They are ready to receive him back and prays the court to hand him a non-custodial sanction for the remainder of his term. The inmate is not known by the area local administration as well as the village elders.

## **F. Recommendation**

In view of the above, his family support community-based sentence, therefore the inmate may be considered to serve Probation Order for the remaining period of 8 Months where we endeavor to offer guidance and counselling on drug abuse and positive life skills.



## Decision

4. This application is based on the provisions of the criminal procedure code namely Section 357, 362, 364 as read with 382. *akn ke act 2010 constitution* 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 new and compelling evidence has become available.
6. 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. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose of 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 lax 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.

8. 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 consider 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 there is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
9. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
10. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislatures intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that:
  - a. All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender;
  - b. Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;
  - c. Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit;
  - d. Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable;
  - e. People should be treated equally, without discrimination; and
  - f. Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
11. For those reasons, I place the applicant on a Probation Order for the remaining period of eight (8) months in the Area Chief. The release order be issued to remove the applicant from prison custody to the Director Probation and Aftercare Services to supervise the next stage of the sentence. Orders accordingly.



DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025

.....

**R. NYAKUNDI**

**JUDGE**

