



REPUBLIC OF KENYA



**Tallam v Republic (Criminal Revision E347 of 2025)
[2025] KEHC 17978 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E347 OF 2025
RN NYAKUNDI, J
DECEMBER 3, 2025**

BETWEEN

KEVIN KIPROTICH TALLAM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with cultivating narcotic drug contrary to Section 6(a) of the Drugs and Psychotropic substances Control Act No. 4 of 2022. The brief facts of the particulars are that on the 13th day of April 2025 at Kaptangalas area in turbo Sub-County within Uasin Gishu county was found cultivating cannabis sativa (bhang) to wit 313 gms with a total of street value of kshs 15,650/=.
2. The Applicant was convicted on his own plea of guilty and was sentenced to pay a fine of Kshs 50,000/= in default to serve 1½ years imprisonment on 29th April 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.

Decision

4. The Superior Courts have delved into the issue of sentencing which is one of the core functions of trial Courts within our Criminal justice system. In the Fatuma Hassan Salo v Republic [2006] eKLR Makhandia J as he then was remarked; Thus, the court should be guided by evidence and sound legal principles when it comes to the arrival of its decision. He also stated that the court should put into consideration all the relevant factors and exclude the irrelevant factors. In addition, the Court in Peter M. Kariuki v Attorney General, [2016] eKLR also made the following observations; That a Court has been granted discretion in a manner that is both judicial and reasonable – not upon caprice or personal



- opinion. This has been emphasized in the judgments of other cases to be useful to the appeal court when analyzing the judgment of a Lower Court.
5. The Sentencing Guidelines of 2023 provide a foundation and a reference point for Judges and Magistrates in exercising discretion. The Policy Guidelines provides for a three-step approach that is to be applied by a trial Court in individualizing specific sentences befitting specific offences.
 - a. Sentencing options – The Court is meant to consider the sentencing options that are provided for by the statute where the crime falls under. This means a reference to the statute that provides for the crime in question.
 - b. Custodial v non-custodial – For the statutes that provide for both custodial and non-custodial options, the guidelines give principles that are to be considered in analyzing which of these two orders would be the most appropriate.
 - c. The third step is twofold, the choice that is to be considered depends on which option was made in step 3.
 - i. For a non-custodial sentence, the guidelines have also provided a policy through which the Courts discretion is to be applied in choosing the most appropriate non-custodial sentence and eventually mitigation and aggravating circumstances are expected to be put into consideration
 - ii. For imprisonment, the same applies, that the guidelines have provided for a policy to be used in determining how long the term of imprisonment should be after the consideration of aggravating and mitigating circumstances.
 6. A proper recrafted legal framework is needed to meet the challenging task of appropriate sentencing given the disparities on the various sanctions of what one considers to be the same offence with the prescribed sentence by the Legislature.
 7. Having been in this space as a legal professional involved in adjudication of cases within the scope of criminal law, I am of the view that there is an urgent need to carefully study other theories or objectives of sentencing when it comes to punishment in order to determine which ones are acceptable as justifications for punishing the various wrongdoers in specific offences. It serves no purpose to put emphasis on deterrence and abandon the rehabilitative principle or objective if it is thoughtlessly just replaced without very clear guidelines or reasons. There are those who maintain that every different punitive measure taken by the various Courts can be satisfied by a single sentencing scheme, but practically it is difficult to accomplish transformative justice on sentencing by placing emphasis on just one objective. The Courts in Kenya tend to hinge more towards deterrence of an offender than rehabilitation. The common philosophical justifications for the institutional punishments include the following:
 - a. Retribution – punishment is justified merely because the offender has committed a wrong.
 - b. Deterrence – punishment is justified in order to clear the offender from committing further crimes in the future and to deter other members of society in general.
 - c. Rehabilitation – the offender needs to be rehabilitated so that he will behave in a socially acceptable manner.
 - d. Incapacitation – justifies the incarceration of the offender for the protection of society.



- e. Condemnation – the infliction of punishment upon the guilty person is the symbolic condemnation by society of the individual.
8. The Maximum Prisons facilities in Kenya were designed to hold fewer people than they do at the moment. Apparently, the correctional facilities do not have adequate infrastructure to hold the additional population of inmates hence there is an urgent need to revisit the issue of sentencing regime in Kenya to avoid a catastrophe so that petty offenders should be a subject of non-custodial sentences. It is trite that under the rehabilitative theory judicial discretion has been quite abroad, based on the idea that the punishment should fit the criminal and not the crime. Sentencing should be “individualized” depending upon such factors as the particular circumstances of the crime, the prisoner’s previous criminal record, and the chances that another crime will be committed. Consequently, the Judge or Magistrate must have a great deal of discretion in order to treat offenders on a more individualized basis.
9. The assertion of law is that punishment should be such that it makes potential offenders weigh up the rewards and risks associated with crime. It is also appropriate to state that implicitly the aims and objectives of sentencing should be applied in equal measure for none carries more weight than the other. It is a kind of mixed grill which must be fashioned in a manner that looks at that human being as a whole. Let us say for a moment that the specific facts which emerges during the sentencing herein are in support of rehabilitation then a trial court should not hesitate to exercise discretion and tailor the sentence in response to that objective or principle.
10. Rehabilitation involves offering an offender help to overcome problems which he or she faces thereby making it easier for him or her to avoid future reoffending that may arise out of that need. This may include various types of support and assistance by the Executive arm of government and other constitutional organs in the justice sector in terms of financial resources, social skills, employment prospects or even capacity to obtain welfare benefits post release at conviction stage or parole during the pendency of serving the custodial sentence.
11. In the instant case the facts of the case are crystal clear notwithstanding that the learned trial Magistrate substantially exercised discretion to give effect to retribution but I recognize that fair punishment may sometimes have to be robust, where mercy and compassionate is balanced and humane quality of a Judge or Magistrate is tempered to factor in rehabilitation of a convict or offender. I have weighed the scale on the main purposes of sentences, and I am persuaded that the concept of mercy is contained within a balanced and humane approach to consideration of an appropriate sentence. This is one case where it is appropriate that sentence imposed by the trial court be reduced to the period served to provide for compassion and mercy so that the convict can walk home and celebrate Christmas and in retrospection appreciate that the justice system in Kenya works. He is therefore set free unless otherwise lawfully held.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3RD DAY OF
DECEMBER, 2025**

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**R. NYAKUNDI
JUDGE**

