

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E048 OF 2025

BENSON MWANGI WACHIRA.....APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR

RULING

1. The Applicant **BENSON MWANGI WACHIRA** has filed this application dated **31st January 2025** seeking review of the sentence imposed upon him by the Lower Court.
2. The Applicant was charged vide **Nyeri CMCR C No. 161 of 2023** with the charge of **TRAFFICKING NARCOTIC DRUGS CONTRARY TO SECTION 4 as read with SECTION 4 (a) OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES CONTROL ACT 2022.**

3. The particulars of the charge were that

“On 8th day of February 2023 at about 2000 Hrs at Mwireri Village Mweiga Location in Kieni West Sub-county within Nyeri County you were found trafficking

by conveying 21 rolls of cannabis sativa and approximately 200 gms dry plant of cannabis sativa to wit Kshs. 3500/= in contravention of the said Act.”

4. The Applicant faced a second count of **DESTROYING EVIDENCE CONTRARY TO SECTION 116** as read with **SECITON 36 of the PENAL CODE.**

5. The particulars of the charge were that

“On the 8th day of February 2023 at about 2010 hrs at Mworeri Village Kieni West Sub-county within Nyeri County knowing that the cannabis sativa recovered in your house might be required in evidence in a judicial proceedings willfully and unlawfully destroyed green basin which contain cannabis with intent to prevent its being used in evidence.”

6. Upon the charges being read out to him the Applicant entered a plea of **‘Guilty’** on both counts. The facts were read out and the applicant maintained his plea of Guilty. The court then sentenced the applicant to a fine of **Kshs. 4.0 million** in default **ten (10) years** imprisonment on the first count. On

the second count he was sentenced to serve **two (2) years** imprisonment. The sentences were to run concurrently.

7. The Applicant now pleads for a review of his sentence. The **ODPP** opposed the application on grounds that the applicant was a repeat offender.

8. The Power of the High Court to review sentences is set out in **Section 362** of the **Penal Code, Cap, 63 Laws of Kenya** which provides as follows:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings in any such subordinate court.”

9. The orders which the High Court may make upon revision are provided by **Section 364** of the **Penal Code**.

10. I have carefully perused the record of the proceedings in the Lower

Court. I am satisfied that the trial was properly conducted. The applicant entered a plea of guilty to both counts. The facts were read out and the applicant maintained his plea of Guilty. The applicant was properly convicted.

11. The Applicant pleaded for a reduction in his sentence. The state noted

that the amount of contraband recovered on the applicant was not very large and for that reason left the matter to court.

12. I note that the applicant entered a plea of Guilty thereby saving the

court from conducting a full trial. The value of the cannabis found on the Applicant was **Kshs. 3,500/=** only.

13. **Section 4(a)** of the Act which provides for the sentence for trafficking

reads thus

“Any person who trafficks in or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her to be a narcotic drug or

psychotropic substance, shall be guilty of an offence and be liable -

(a) In respect of any narcotic drug or psychotropic substance

(i) Where the person is in possession of between 1-100 grams to a fine of not less than thirty million shillings or to imprisonment for a term of thirty years or to both such fine and imprisonment.

(ii) Where the person is in possession of more than 100 grams to a fine of not less than fifty million shillings or three times the market value of the narcotic psychotropic substance, whichever is greater or to imprisonment for a term of fifty years or to both such fine and imprisonment.

14. The applicant was a repeat offender a fact which he did not deny. As

such a custodial sentence was appropriate. According to the Act the fine of **Kshs. 4.0 million** was lawful given the amount (**200gms**) of contraband recovered on him.

15. Accordingly in respect of Count No. 1 I uphold the sentence imposed

by the trial court.

16. Regarding Count No. 2 I find that the **two (2)** year sentence imposed

by the trial court was appropriate and I am not inclined to interfere with the same.

17. Finally this application for review is dismissed. The sentences imposed

by the trial court are confirmed and upheld.

Dated in Nyeri this 5th day of December 2025.

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**MAUREEN A. ODERO
JUDGE**

ORIGINAL