



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CRIMINAL APPEAL NO. E001 OF 2025

JAPHETH MUTEREMA.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E490 of 2024 of the Senior Principal Magistrate’s Court at Engineer by Hon. E.N. Wanjala– Principal Magistrate)

JUDGMENT

1. Japheth Muterema, the appellant herein, was convicted after pleading guilty to the offence of possession of narcotic drugs contrary to section 3(1), as read with section 3(2), of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994.
2. The particulars of the offence were that on the 10th day of September 2024, in Njabini Township, South Kinangop Sub-County within Nyandarua County, he was found in possession of 200 grams of bhang with a street value of Kshs 1,000.00, which was not in medicinal preparation form.
3. The appellant was sentenced to serve three years' imprisonment. He was dissatisfied with the sentence and appealed against it through Elly Gichengo & Company Advocates. He raised the following grounds:
 - a) The learned magistrate erred in law and fact in convicting the appellant on an equivocal plea.
 - b) The learned trial magistrate erred in law and fact by awarding the appellant a sentence that is not only excessive but also harsh in the circumstances of the offence.
 - c) The learned magistrate erred in law while exercising his discretion on sentencing by applying the wrong principle applicable to a first offender.
 - d) The learned magistrate erred in law in convicting the accused on the unreliable evidence of the prosecution witnesses without evaluating it and making a finding on it.

- e) The learned magistrate erred in law in not considering the reasonable doubts available in the case against the appellant and erred in law in not giving the appellant the benefit of those doubts.
 - f) The learned magistrate erred in law while exercising his discretion in sentencing by unsubstantiated claims from the probation office report, and neither the accused nor their counsel on record were supplied with the report before sentencing.
 - g) The learned magistrate erred in law in convicting the accused without the prosecution having proved all the ingredients of the offence
 - h) The learned magistrate erred in law while exercising his discretion in sentencing for not conserving the quantity and street value of the alleged recovered substance and all the weighty mitigation offered by the appellant.
4. The state opposed the appeal through M/s. Odero Vena. She cited an ongoing related case as one of the reasons why the sentence should not be interfered with.
 5. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs the Republic [1972] EA 32.**
 6. Although it was argued that the plea was equivocal, after reviewing the record, I find this argument unmerited.
 7. Section 3 (2) of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994 provides:

A person guilty of an offence under subsection (1) shall be liable—
(a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years;
 8. The narcotic drugs the appellant was arrested with were estimated to be valued at Kshs. 1000. 00. He was a first offender.
 9. The learned trial magistrate erred in considering an ongoing case against the appellant as well as his reputation when passing sentence. An ongoing case cannot be considered in sentencing, as the appellant is entitled to be presumed innocent until proven guilty. A decision in a case that must be regarded as should have been made before the commission of the offence for which the accused is being tried.

10. The appellant was sentenced on 30 December 2024. After considering the quantity of cannabis involved and the fact that the appellant was a first offender, I set aside the sentence imposed by the trial magistrate. I replaced it with a sentence equivalent to the time he has already served. The result of this is that the appellant ought to be released unless he is lawfully detained for other reasons.

Delivered and signed at Nyandarua, this 16th day of December 2025

KIARIE WAWERU KIARIE

JUDGE