Karimi v Republic (Criminal Revision E155 of 2025)
[2026] KEHC 1780 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1780 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CRIMINAL REVISION E155 OF 2025

DKN MAGARE, J

FEBRUARY 12, 2026

BETWEEN

SAMUEL MAINA KARIMI .... APPLICANT

AND

REPUBLIC .... RESPONDENT

RULING

1. This is a ruling over an application by the Applicant seeking to revise the sentence meted out against him in Nyeri CMCC No. E1028 of 2024 vide the judgment dated and delivered by Honourable Mr. Faith Munyi, Senior Principal Magistrate.
2. The trial court sentenced the Applicant having found him guilty of the offence of being in possession of cannabis contrary to Section 3 (i) and 3 (2)(a) of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994. The Applicant was sentenced to serve 4 years' imprisonment. There was no option of fine.
3. The Applicant stated that he was remorseful as a first offender and ready to change. He prayed for a noncustodial sentence. The Respondent proposed a custodial sentence as opposed to a non-custodial sentence but was amenable to a reduced sentence.

Analysis

4. The issue is whether the sentence should be revised to a lessor one. The Applicant was charged with the offence of being in possession of cannabis contrary to Section 3 (i) as read with 3(2)(a) of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994.
5. The particulars of the offence were that on 5.9.2024 at Warazojet in Kieni East Subcounty of Nyeri County, the Applicant was found in possession of narcotic drugs, namely bhang, to wit 300g with a street value of Ksh. 9,000/= which was not in any form of medicinal preparation in contravention

of the said Act. The relevant provision of the law is section 3 of the *Narcotic Drugs and Psychotropic Substances (Control) Act*, No. 4 of 1994, under which the applicant was charged and subsequently convicted. The section provides as follows:

(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.

(2) 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; and

(b) in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment.

6. The sentence indicating liable to means it is merely the maximum sentence. In the case of Thomas Mwambu Wenyi v Republic [2017] KECA 756 (KLR) the court held as follows:

As for the sentence, the Supreme Court of India in Alister Anthony Pereira vs State of Maharashtra at paragraphs 70-71 had this to say on sentencing:-

“70. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no strait jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence

As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

It is not disputed that upon conviction for the offence of defilement, the appellant was “liable to imprisonment with hard labour for life.” Sir Henry Webb C.J. in Kichanjele S/O Ndamungu versus Republic (1941) 8EACA 64 had this to say on the proper construction of the words “liable to”:

“The wording used throughout the code is “shall be liable to” but a consideration of the various sections shows in our judgment, that the use of the words “shall be liable to” does not import that the sentence mentioned in any particular section in which these words occur is merely a maximum and that the court may impose any lesser sentence below the limit indicated.”

The predecessor of the court went further in Opoya versus Uganda [1967] EA 752 at page 754 where Sir Clement DeLestang V.P. picked up the conversation inter alia thus:

> “It seems to us beyond argument that the words “shall be liable to” do not in the ordinary meaning require the imposition of the stated penalty but merely express the stated penalty which may be imposed at the discretion of the court. In other words they are not mandatory but provide a maximum sentence only and while the liability existed, the court might not see fit to impose it”

7. Therefore, the court in exercising discretion must note the sentence as maximum and may give any other sentence. The Applicant pleaded guilty to the offence. The trial court convicted the Applicant and sentenced him to serve 4 years imprisonment. No option of fine was given. Aggrieved, the Applicant filed for revision of the sentence.

8. It must be recalled that sentencing is discretionary and cannot be lightly interfered with. In Shadrack Kipchoge Kogo versus Republic Eldoret Criminal Appeal No. 253 of 2003, the Court of Appeal posited as follows:

> Sentence is essentially an exercise of the trial court and for this court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant factor or that a wrong principle was applied or short of those the sentence was so harsh and excessive that an error in principle must be inferred.

9. This therefore brings the court to the jurisdiction of this court. In the High Court of Malaysia in Public Prosecutor vs. Muhari bin Mohd Jani and Another [1996] 4 LRC 728 at 734, 735 it was stated as doth:

> “The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammeled and free, so as to be fairly exercised according to the exigencies of each case.”

10. The Applicant mitigated that he had children he was taking care of and prayed for a noncustodial sentence. The Narcotic Drugs and Psychotropic Substances involved were Cannabis Sativa and not the other hard drugs. The court, in arriving at the decision, did not consider any PACS report, mitigating factors, or the fact that the applicant was a first offender. In the case of Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) by the Supreme Court [Maraga CJ & P, Mwilu DCJ &VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ] propounded the following guidelines with regard to mitigating factors applicable in a re-hearing sentence:

    (a) Age of the offender;

    (b) Being a first offender;

    (c) Whether the offender pleaded guilty;

    (d) Character and record of the offender;

    (e) Commission of the offence in response to gender-based violence;

    (f) Remorsefulness of the offender;

(g) The possibility of reform and social re-adaptation of the offender;

(h) Any other factor that the Court considers relevant.

11. The purpose and objectives of sentencing, as stated in the Judiciary Sentencing policy, should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the ends of justice and ensures that the principles of proportionality, deterrence, and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 Sentencing Guidelines are as follows: -

> " 1. 3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.
>
> i. Retribution: To punish the offender for their criminal conduct in a just manner.
>
> ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
>
> iii. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
>
> iv. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community
>
> v. Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
>
> vi. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
>
> vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
>
> viii. Reintegration: To facilitate the re-entry of the offender into the society"

12. The Applicant was a first offender and expressed remorse. The Court notes, however, that no probation report was produced. He was denied the benefit of a non-custodial sentence because he did not have a probation report. The Applicant was in possession of cannabis, 300g. This court does not have the benefit of the same.

13. Regarding the severity of the sentences and fine expressed in the relevant statute, the term of up to 4 years imprisonment without the option of a fine was excessive in the circumstances, taking mitigation into consideration, the plea of guilty, the amount of drugs and being a first offender. Further, the court

erred in failing to call for a pre-sentence report. I exercise discretion and set aside the sentence meted out. I reduced the sentence to a fine of Ksh. 50,000/= in default, one year imprisonment.

Determination

14. I therefore make the following orders: -

    a. The sentence of 4 years imprisonment is set aside and substituted with a fine of Ksh. 50,000/ = in default imprisonment for a term of 1 year.

    b. The custodial sentence shall run from the date of arrest, 5.9.2024, excluding the time on bond between 06.09.204 and 19.06.2025.

    c. This file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 12TH DAY OF FEBRUARY, 2026. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Ms. Kaniu for the State

Applicant present

Court Assistant – Michael