

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL REVISION CASE NO. E276 OF 2025**

DICKSON KIVUTI IRERI.....APPLICANT

**-VERSUS-**

REPUBLIC.....RESPONDENT

**R U L I N G**

**The Charge**

1. The applicant was charged with being in possession of cannabis sativa contrary to section 3(2)(a) of the Narcotic Drugs and Psychotropic Substances Control Act. He was convicted and sentenced to pay a fine of Kshs.50,500/= in default, to serve 1-year imprisonment.
2. It appears, though not pleaded, that the applicant was convicted with being in possession in MCCRC E508/2023 and fined 50,000/- or in default to 3 years imprisonment; and in MCCRC E005/2023 for a similar offence he was fined Kshs.50,000 in default to serve 1 year imprisonment.

**The Application**

3. Through his undated notice of motion filed on 15<sup>th</sup> May 2025, the applicant seeks that the 3 year-imprisonment sentence be reviewed to a non-custodial sentence. He stated that he pleaded guilty to the charge and at the time of reading the charges, he was suffering from a hearing problem so he did not hear the charge. That at the time of sentencing, he could not mitigate as he was suffering from malaria and a septic wound. He stated that he is the sole breadwinner of his family who has used his time in custody to fully reform.

**Parties' Submissions**

4. The respondent did not oppose the application, and both parties filed written submissions.
5. In his submissions, that applicant stated that he had 3 months and 20 days left on his sentence as at 30<sup>th</sup> November 2025, which period he hoped would be converted to a non-custodial sentence. He urged the court to use its unlimited jurisdiction under Article 165(3) (a&b) of the Constitution. He stated that he is

remorseful and he wished to return to his family who depended on him for sustenance. That through a probation order, this would be possible. He urged the court to consider that he was not accorded a chance to mitigate owing to illness.

6. On its part, the respondent argued that a revision application is not a substitute for an appeal and that the sentence is lawful given the seriousness of the offence. It relied on the cases of **Kuria v Republic [2024] KEHC 13731 (KLR)** and **Kariuki v Republic [2025] KEHC 7326 (KLR)** and stated that the sentence imposed is as prescribed in law and the applicant has not proved that wrong principles of law were applied in sentencing. It urged the court to uphold the sentence.

### **Issue for Determination**

7. The issue for determination is whether the application has merit.

### **Analysis and Determination**

8. The revisionary power of the High Court is drawn from Article 167(6)&(7) of the Constitution which provides:

***“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.***

***(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”***

9. Section 362 of the Criminal Procedure Code provided as follows on the High Court’s supervisory jurisdiction:

***“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 of any such subordinate court.”***

10. In E005/2023 the trial court delivered its judgement on 18<sup>th</sup> July 2023. On the same day, the court recorded mitigation where the applicant stated that: *“I once got involved in road accident and my back still aches. I have been dealing with drugs to raise money for livelihood. There is a lot of congestion in the prison”*.

After this, the applicant was sentenced to pay a fine of Kshs.50,500/=, or in default, 1 year imprisonment. On the same day, a warrant of commitment where there is a fine, was drawn and the applicant was sent to prison pending payment of the fine.

11. Therefore, from the trial court's record, the applicant was not sentenced to 3 years imprisonment as stated in his application. It is also not true that he was not given a chance to mitigate, not trivializing the fact that he could have been unwell at the time (although there is no proof that he informed the trial court of his illness, if any).
12. In E508/2023 the applicant pleaded guilty and was convicted on 27/07/2023. On the same day he gave his mitigation and was fined Kshs.50,000/- or in default 3 years imprisonment.
13. Even though the applicant prays for a non-custodial sentence, this prayer has been overtaken by events because the imprisonment term in default of a fine in E005/2023 has since lapsed. Therefore, there would be no basis for granting that prayer. As a result, the application should fail.

#### **Disposition**

14. The application has no basis since the prayers sought are based on an error/non-existent record. The issues have also been overtaken by events since the imprisonment terms in default of a fine has since elapsed in E005/2023. In E508/2023 the applicant continues to serve a sentence of 3 years. There is no basis for review of his sentence as it is a lawful sentence.
15. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 05<sup>th</sup> day of March, 2026.**

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**R. MWONGO  
JUDGE**

#### **Delivered in the presence of:**

1. Applicant Present in Court
2. Ms. Mwaniki for the Respondent
3. Francis Munyao - Court Assistant