

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL REVISION CASE NO. E294 OF 2025**

SILAS NJERU NDARU.....APPLICANT

**-VERSUS-**

REPUBLIC.....RESPONDENT

**R U L I N G**

**The Charges**

1. The applicant was charged in Siakago MCCRC E377/2023 with 2 counts: Possession of narcotic drugs contrary to section 3 (1) and (2) of the Narcotic Drugs and Psychotropic Substances Control Act and being in possession of plastic flat carrier bags contrary to section 140 (b) of the Environment Management Act as read with Gazette Notice No.2356 and 2334.
2. After a full hearing, he was convicted for the first count and acquitted of the second count. On 9<sup>th</sup> day of October, 2024, he was sentenced to three (3) years imprisonment without the option of a fine.

**The Application**

3. Through his undated notice of motion, the applicant is seeking that the court reviews his, what he alleges is a 4 years imprisonment sentence to a non-custodial sentence. According to him, he was sentenced to the imprisonment term for the first count and he now seeks to have that sentence set aside on grounds that he is a first offender who is remorseful and has rehabilitated in prison.

**Parties' Submissions**

4. The respondent did not oppose the application, and both parties filed written submissions.
5. In his submissions, that applicant stated that for the first count, he was sentenced to 3 years imprisonment and for the second count, 1-year imprisonment without the option of a fine; the sentences running consecutively. He urged the court to order that the sentences run concurrently and that time spent in custody ought to be considered in accordance with section 333(2) of the Criminal Procedure Code. He urged the court to exercise its revisionary powers under section 362-364 of

the Criminal Procedure Code and section 4(1) and (2) of the Probation of Offenders Act

6. On its part, the respondent argued that a revision application is not a substitute for an appeal and that the sentence is lawful. 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 sentences imposed are 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. From its judgment, the trial court did not deal with the second count and found the applicant guilty of the offence of being in possession of narcotic drugs contrary to section 3(1) of the Narcotic Drugs and Psychotropic Substances Control Act. His averments that he was sentenced to 1 year imprisonment for the second count are completely inaccurate. The court only convicted him of being in possession of cannabis sativa contrary to section 3(1) of the Narcotic Drugs and

Psychotropic Substances Control Act and sentenced him to 3 years imprisonment without the option of a fine. This sentence was passed on 9<sup>th</sup> of October, 2024 and on the same day, a warrant of commitment was drawn. The applicant was then sent to prison to serve his sentence starting that very day.

11. It appears that the applicant did not understand that he was acquitted of the second count.
12. His prayer for a non-custodial sentence is misplaced given that the court has seen another case (MCCRC E144 of 2022) connected with possession or trafficking in narcotic drugs and in which he was convicted.

### **Disposition**

13. If the applicant's application was intended to refer to MCCRC E144 of 2022, in that case he was convicted for possession of cannabis and sentenced on 03/04/2024 to one (1) year imprisonment. That period elapsed in April, 2025.
14. The applicant's application is therefore without merit and is dismissed accordingly.
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 at Mwea Prison
2. Ms. Mwaniki for the Respondent
3. Francis Munyao - Court Assistant