



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E461/2025

ABDULMAJID MSALLAM TIMAMI VS THE REPUBLIC

RULING

(Revision of sentence emanating from Mombasa Criminal Case No. E532 of 2019)

1. The applicant was charged and convicted of transporting narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994. He was sentenced to sixteen (16) years' imprisonment.
1. The inmate's plight came to the court's attention during a routine supervisory visit. The applicant was physically produced before the court, which observed that he is in dire medical need. A sentence review report was subsequently filed by the Senior Probation Officer, given the seriousness of the offence.
2. Section 4 of the Probation of Offenders Act provides in material part: "Power of court to permit conditional release of offenders. ... Where the court is of the opinion that, having regard to the age, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may ... make a probation order, and may require the offender to enter into a recognizance ..."
3. In *Kimutai v. Republic* (2024) KEHC 6871 (KLR) the court listed factors to consider when determining custodial versus non-custodial sentences:



(a) gravity of the offence; (b) criminal history of the offender; (c) character of the offender;



- (d) protection of the community; and (e) offender's responsibility to third parties.
4. In Republic v. Felix Madalitso Keke (Confirmation Appeal No. 404 of 2010, unreported), the court held that public interest in sentencing extends beyond deterrence to include the prisoner's dignity and prospects for reformation, restoration and rehabilitation; sentences should not be cruel, degrading or inhuman.
 5. The record includes a sentence review report, a prison progress report and medical reports from Coast General Hospital. The applicant is fifty-five (55) years old, has demonstrated remorse, and commits to being a lawabiding citizen if reintegrated. He has serious medical needs, has been bedridden while in custody, is hemiplegic, and requires constant medical attention and support equipment following brain surgery. His condition imposes significant physical, mental and psychological strain on custodial staff.
 6. Having regard to the foregoing, the court finds that the applicant no longer poses a danger to society but requires intensive medical care that the custodial environment struggles to provide. His right to dignity must be safeguarded; continued confinement under present conditions risks breaching that right.
 7. Considering all factors in totality, the applicant's application is allowed. He is suitable for a noncustodial disposition and, if fit for reintegration, should not be held back.
 8. The sentence is reviewed to reflect time already spent in custody and is varied to THE TIME ALREADY SPENT IN CUSTODY PLUS a probation order for three (3) years. Recognizing that the applicant may be unable to travel to report to the probation office because of his medical condition the area chief to work in liaison with the probation office for close monitoring and to ensure compliance.

DELIVERED, DATED and SIGNED at MOMBASA on this 25th day of FEBRUARY 2026. Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI
JUDGE



SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI





THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-02-27 19:48:44

