



**Ndolo v Republic (Miscellaneous Criminal Application
E003 of 2026) [2026] KEHC 5445 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2026**

JN ONYIEGO, J

APRIL 16, 2026

BETWEEN

JOSHUA VINCENT NDOLO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence of Hon. R. Aganyo (PM) in
Criminal Case No. E013 of 2025 delivered on 28-7-25 in Wajir Law Courts)*

RULING

1. The Applicant was charged before the Principal Magistrate's Court at Wajir with being in Possession of Narcotic Drugs Contrary to Section 3 (1) as read with Section 3(2)(a) of the Narcotic Drugs and Psychotropic Substances Control Act No.4 of 2022. Particulars were that, on the 21st March 2025, within Habaswein Township in Habaswein Sub-county, in Wajir County, he was found being in possession of 17 rolls of suspected narcotic drug namely Cannabis sativa(bhang) in form of sweet shape with a street value of 1700= in contravention of the said Act.
2. Count two, he was charged with the offence of Stealing Contrary to Section 278 as read with Section 275 of the Penal Code in that, on 13-6-2025, along the streets of Habaswein, in Habaswin Sub-county within Wajir County, he stole one black Bluetooth Radio valued at Kshs. 2000/= the property of Joseph Muema Musa. In the alternative, he was found being in possession of the said blue tooth.
3. Count three, he was charged with Being in Possession of Narcotic Drugs Contrary to Section 3(1) as read with Section 3(2)(a) of the Narcotic Drugs and Psychotropic Substances Control Act No.4 of 2022. Particulars were that, on the 14th June 2025, within Habaswein Township in Habaswein Sub-county, in Wajir County, he was found being in possession of 17 rolls of suspected narcotic drug namely Cannabis sativa(bhang) in form of sweet shape with a street value of 2,000= in contravention of the said Act.



4. Having denied the charges in respect of counts 1 and 2, he pleaded guilty to count 3 to which he was sentenced to 4 years less 40 days being the period spent in remand custody. The other two counts were withdrawn under Section 87(a) of the Criminal Procedure Code, after witnesses failed to turn up.
5. Subsequently, he moved to this court vide an undated notice of motion seeking review of sentence on grounds that; he was remorseful; he admitted the charge; the sentence is too harsh; his mother is suffering from breast cancer and that; he is the sole bread winner.
6. In response, prosecution opposed the application arguing that the sentence is lawful and appropriate. That the Applicant is a danger to society.
7. I have considered the application and the oral submissions by both parties. The main issue for determination is whether this Honourable Court has jurisdiction to determine the application herein and issue the orders sought.
8. The law governing revision in a criminal case is captured under Section 362 and 364 of the Criminal Procedure Code. Section 362 and 364 which provides as follows;

“ 362. Power of High Court to call for records

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.

364. Powers of High Court on revision

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (c) in proceedings under Section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate



court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

9. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the Criminal Procedure Code is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High Court in the case of Barongo Sianyio Atembe vs Republic.
10. In the instant case, the court is being asked to exercise mercy and therefore reduce the sentence. There is no revision application nor appeal filed challenging the legality or otherwise propriety of the sentence imposed. It is trite that sentencing is at the discretion of the court. An Appellate Court can only interfere if the same is illegal, excessive or imposed after taking into account wrong principles.
11. In the instant case, I do not see any good reason persuasive enough to interfere with the legal sentence imposed. Offences of drug trafficking are a danger to the young children especially the youth. The Applicant deserves a deterrent sentence. To that extent the application is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 16TH DAY OF APRIL 2026

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J. N. ONYIEGO

JUDGE

