

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ITEN**  
**MISCELLANEOUS CRIMINAL APPLICATION E036 OF 2025**

**BENARD KORIR.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Appellant and a co-accused were charged in **Iten Senior Principal Magistrate’s Criminal Case No. E905 of 2024**, with the offence of cultivating prohibited plants contrary to **Section 6** of the **Narcotics and Psychotropic Substances Control Act, No. 4 of 1994**. The particulars were that on diverse dates between 1/01/2024 and 3/09/2024 at Cheptulon Village in Marakwet West sub-County, within Elgeyo Marakwet County, were jointly found having planted 10 prohibited seedlings suspected to be cannabis sativa (bhang) valued at approximately Kshs 1,000/- street value. The proceedings of the trial Court have not been typed and I am unable to easily read through the trial Magistrate’s handwritten notes but I gather that both Applicants were convicted on their own plea of guilty, and each was then, on 17/09/2024, sentenced to serve 3 years imprisonment.
  
2. The Applicant has now approached this Court with the undated Notice of Motion filed on 25/07/2025 seeking, in a nutshell, review of his sentence to a non-custodial one claiming, basically, that he has now reformed. He opted to address the Court formally rather than file written Submission, and basically reiterated the same. Although **Prosecution Counsel Racheal Mwangi**, sought and I granted her time to file her Submissions, I have not come across any filed of the State.

**Determination**

3. The sole issue for determination in this matter is **“whether this Court should review the sentence of 3 years imprisonment imposed on the Applicant by the trial Court”**.
  
4. The High Court’s jurisdiction in respect to the powers of Revision is supervisory and is provided under the **Constitution** in **Article 165 (6)** and **(7)** in the following terms:
  - 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.”**

5. Section 362 of the **Criminal Procedure Code**, then provides as follows:

**Revision**

**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.**

6. In considering applications invoking this Court’s revisionary powers, the operative phrase is therefore **“correctness, legality or propriety”** of any finding, sentence or order made by the lower Court. The purpose and nature of the revisionary jurisdiction of the High Court was then examined by **Odunga J (as he then was)**, in the case of **Joseph Nduvi Mbuvi vs Republic [2019] eKLR** as follows:

**“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”**

7. On his part, **Nyakundi J**, in **Prosecutor vs Stephen Lesinko [2018] eKLR**, outlined the limited instances when the High Court may exercise its revisionary jurisdiction, to include, **(a) where the decision is grossly erroneous; (b) where there is no compliance with the provisions of the law; (c) where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record; (d) where**

**the material evidence on the parties is not considered; and (e) where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.**

8. Regarding sentence, as was restated by the Court of Appeal in **Bernard Kimani Gacheru v Republic [2002] eKLR**, it is a matter that rests at the discretion of the trial Court, and a higher Court will therefore not easily interfere with the sentence unless it is manifestly excessive in the circumstances of the case, or the trial Court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle:
9. In this matter, the Applicant, having been convicted on his own plea of guilty, was then sentenced to serve 3 years imprisonment for the offence of cultivating prohibited plants contrary to **Section 6** of the **Narcotics and Psychotropic Substances Control Act**. The **Section** provides that:

**6. Penalty for cultivation of certain plants**

**Any person who—**

**(a) cultivates any prohibited plant; or**

**(b) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of the cultivation, gathering or production of any prohibited plant,**

**shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or three, times the market value of the prohibited plant, whichever is, the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.**

10. In view thereof, it is clear that the sentence imposed by the trial Court was within the law. This observation does not however mean that I cannot interrogate whether the sentence was manifestly excessive or harsh, which I now do. In doing so, I cite the Supreme Court decision in the the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**) in which it guided that, in re-sentencing, the following mitigating factors would be applicable; **(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; and (h) any other factor that the Court considers relevant.**

11. Similarly, the Court of Appeal, in the case of **Daniel Kipkosgei Letting Vs. Republic [2021] eKLR**, pronounced itself as follows;

**“With regard to the above, we observe that 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 end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. ....”**

12. Further, **Majanja J**, in quoting **Francis Karioko Muruatetu (supra)**, in the case of **Michael Kathewa Laichena & another v Republic [2018] eKLR**, stated as follows:

**“The Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. ....”**

13. Applying the above guidelines to this case, I find that there were mitigating factors which the trial Court may not have fully considered and, as such, ended up imposing the manifestly excessive sentence of 3 years considering the circumstances of the case. For instance, the Applicant was a first offender, and he also readily pleaded guilty thus saving precious judicial time. The cannabis plants he was found to have cultivated were also only 10 with a street value estimated at the low amount of Kshs 1,000/-. The Applicant is also a young man of only 21 years of age and still has his whole life ahead of him.

14. Although the offence he was convicted of is prevalent and ought to be decisively dealt with, the Applicant, having been sentenced on 17/09/2025, I believe that by having already served a period of almost 1 year and 8 months in prison so far, retribution has been fully achieved, and he has now been rehabilitated. I believe understands the need to remain a law-abiding citizen, and I do not believe that continuing to incarcerate him will be of any further benefit to the society. I find it proper to now let him return home and serve the nation.

**Final Orders**

15. In the circumstances, I commute the prison sentence imposed to the period already served. The Applicant shall now therefore be forthwith set at liberty unless otherwise lawfully held for any other reason.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2026**

.....  
**WANANDA JOHN R. ANURO**  
**JUDGE**

**Delivered in the presence of:**

**The Applicant**

**Ms. Mwangi for the State**

**Court Assistant: Brian Kimathi**