



REPUBLIC OF KENYA



**Mutunga v Republic (Criminal Appeal E044 of 2023)
[2024] KEHC 17135 (KLR) (23 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 17135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E044 OF 2023
TM MATHEKA, J
APRIL 23, 2024**

BETWEEN

JACKLINE NTHULE MUTUNGA APPLICANT

AND

THE REPUBLIC RESPONDENT

(Being an Appeal from the ruling of Hon. P.N Gesora (C.M) in the Chief Magistrate's Court at Makueni Criminal Case No.E405 of 2023, delivered on 4th September 2023.)

JUDGMENT

1. The appellant was charged with being in possession of Narcotic drugs contrary to section 3(1) as read with 3(2) of the Narcotic Drugs and Psychotropic Substance Control [Act No. 4 of 1994](#). Particulars being that on the 3rd day of September 2023 at around 1330hrs in Neema shopping centre in Makueni sub-county within Makueni county was found in possession of Narcotic drugs (bhang) to wit 40 rolls with a street value of Kshs.4,000 which was not in any form of medicinal preparation.
2. She pleaded guilty on 4/9/2023 and was sentenced to 2 years' imprisonment.
3. She filed this appeal. The grounds are that as a 1st offender she did not understand the seriousness of the offence. That she is a single mother of a young child and is currently 8 months pregnant.
4. I sought a social inquiry report which confirmed that the appellant was pregnant, the single mother of one toddler. She is remorseful and seeks that this court considers a sentence that will allow her take care of her child and not deliver her other child in prison custody.
5. A careful perusal of the appeal reveals that it's actually a plea for sentence review.
6. The issue is whether her application for sentence review has merit.



7. Taking into consideration the Sentencing Guidelines the circumstances of the offence – the offender is a 1st offender and the period the offender had been in custody – from 3/9/2023 for about 7 months and the expression of remorse, she has learned her lesson that crime does not pay.
8. In addition the child she carries and the child at home are both children in need of care and protection whose best interests will be served by the mother serving a non-custodial sentence.
9. The application is merited.
10. The remainder of the sentence is revised to 16 months' probation supervision.
11. During this period she will abide by the probation order and shall not commit any other offence. Should she commit any other offence the probation order will lapse and she will serve the sentence in prison custody.
12. A Probation Order to issue accordingly

DATED, SIGNED AND DELIVERED IN OPEN COURT ON 23RD APRIL 2024

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

DATE: 2024-04-24 16:51:48

