



**Ekino v Republic (Criminal Revision E429 of 2024)
[2024] KEHC 15002 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E429 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

SHADRACK EKINO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of trafficking in Narcotic Drugs (Bhang) contrary to section 4(a) of the Narcotic Drugs and Psychotropic Control Act. He also faced another charge of resisting arrest contrary to Section 103(A) of the *National Police Service Act* No. 11A of 2011. an alternative charge of being in possession of Cannabis Sativa contrary to section 3(1) as read with Section 3(2)(a) of the Narcotic Drugs and Psychotropic Substances Control Act.
2. The applicant pleaded guilty to the offence before Hon. C. Kesse on 29th July, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 1year imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6)(a) &(b) of *the Constitution*.
4. The applicant seeks a sentence review based on the sentence review report on record. The report is responsive. The personal circumstances of the applicant are indicated to the that he is the son of Paul Ekeno and Julia Akai who were originally from Turkana County but relocated to their present residence in Yamumbi Sub Location within Uasin Gishu County where they own approximately 0.5 Acres of land, the inmate is the 5th born in a family of 14 children, before his arrest he worked as a casual worker at different farms within Yamumbi shopping centre and he is married to Mary Njeri with two children who are school going. That he is a class eight dropout due to what he claims as lack of school fees to continue with his secondary school.



5. The prison authorities indicated that the inmate has been working at the prison farm (Lumumba) during his stay in prison and prison authorities have nothing negative to say about him. His father Paul who is a Local Pastor believe that the inmate has learned a lesson and is willing to be part of the re-integration process.
6. As for the applicant's attitude towards the offence, the report captured the fact that he is remorseful and pleads for forgiveness. That he is very much ready to pay for his deeds through community service at Yamumbi Police Station Primary school.
7. The report recommended that the applicant be place on a community service Order for a period of 4 months, which is the remaining period in custody.
8. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
9. Further to the aforementioned, the [Community Service Orders Act](#) makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
10. Having carefully weighed the circumstances of this case, with particular attention to the Applicant's youth and potential for rehabilitation, this Court finds that the present case aligns with the legal framework of the Community Service Act as an appropriate alternative to continued imprisonment. The Applicant, being a young person with considerable potential for reform, would benefit significantly from a non-custodial sentence coupled with proper guidance and counselling.
11. Therefore, this Court orders that the Applicant's remaining period of incarceration be converted to a Community Service Order of four months' duration, to be served at the Yamumbi police station. Monthly reports shall be filed with this Court by the supervisor through the probation officer to ensure effective monitoring of this non-custodial sentence. It must be emphasized that any breach of the conditions attached to this Order shall result in its immediate cancellation and reversion to custodial sanctions.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF NOVEMBER 2024.

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R. NYAKUNDI

JUDGE

