



**Republic v Nyabata & another (Criminal Revision E136 of 2024)
[2025] KEHC 55 (KLR) (13 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 55 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL REVISION E136 OF 2024
RL KORIR, J
JANUARY 13, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

ANASTACIA NYABATA 1ST RESPONDENT

PHANICE KEMUNTO 2ND RESPONDENT

RULING

1. This Revision was brought to my attention vide the Applicant’s letter dated 15th November 2024 forwarded through the Magistrate’s Court Sotik, a Station under my supervisory jurisdiction.
2. The Respondents were charged with the offence of being in possession of bhang contrary to section 3 (1) as read with section 3 (2) (a) of the [Narcotic Drugs and Psychotropic Substance Control Act](#). The particulars of the offence were that on 4th November 2024 at Kaptebengwet Trading Centre, Kamogomon Location in Konoin Sub-County within Bomet County, the Respondents were found in possession of Cannabis Sativa (Bhang) to wit 69 rolls of street value Kshs 14,000/= which were not prepared for medicinal use.
3. The Respondents were arraigned in the trial court on 5th November 2024 for plea. Both Respondents pleaded guilty to the offence and were convicted on their own pleas of guilty. The trial court sentenced both Respondents to serve one day community service within the court premises
4. The Applicant was aggrieved by the sentence and sought a revision of the same. The Applicant submitted that the sentence although legal was too lenient and was not proportionate to the charge and the number of rolls of bhang that the Respondents were nabbed with.



5. It was the Applicant's submission that the court should consider the drug menace in this jurisdiction and the fact that it was destroying the lives of young people. They urged this court to vary the sentence and impose custodial sentences on the Respondents.

6. This court's revisionary jurisdiction is exercised under the provisions of Section 362 of the *Criminal Procedure Code* which states:-

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.

7. In line with the above jurisdiction, this court has examined the trial record. Upon perusing the record, this court directed that the parties in the case be served to attend court to be heard before any adverse orders could be entered on revision. This court's record shows that only the Prosecution attended on 3rd December 2024 while the two Accused skipped the court session.

8. In the case of *Joseph Nduvi Mbuvi vs Republic* (2019) eKLR, Odunga J. (as he then was) held that:-

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in *Public Prosecutor Vs. Muhari Bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735:-

“The powers of the High Court in revision are amply provided under section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

9. The Applicant's grievance was the leniency of the sentences imposed by the trial court. The trial court sentenced the Respondents to one day community service and the Applicant wanted this court to impose on the Respondents a custodial sentence.

10. Section 3 of the *Narcotic Drugs and Psychotropic Substance Control Act* provides:-

- (1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable—



- (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment to a term of not more than five years or to a fine of not more than one hundred thousand shillings.....

11. I have carefully perused the trial court record. The Respondents were convicted on their own pleas of guilty after being found in possession of 69 rolls of bhang. They were sentenced to one day community service. In sentencing the accused, the trial court (Hon T.K. Kwambai PM) noted that the exhibits had not been tested. This was an error of legal principle because once the court accepted the Accused's guilty plea, it was not required to have any evidence tested as there was no trial. It was sufficient for the court to ensure that the plea was unequivocal before entering a plea of guilty and once that was done, the provisions on mitigation and sentence kicked in.
12. The sentence provided under Section 3 of the Act is either imprisonment or a fine. In exceptional circumstances, the court may exercise discretion and impose a non-custodial sentence including community service. The court however must exercise discretion in sentencing judicially as sentence must take into consideration the principle of proportionality. The offence was serious and considering the negative impact of drugs in the community, judicial discretion called for a more serious and deterrent sentence. It is my finding that the sentence was neither lawful nor proportionate in this instance.
13. I set aside the one-day community service sentence imposed by the trial court and substitute therefore an appropriate sentence. I sentence each Respondent to pay a fine of Kshs 20,000/= and in default, each shall serve 1-year imprisonment.
14. The trial file with a copy of the proceedings in this Revision file is hereby returned to the trial court for execution of the sentence.

RULING DELIVERED, DATED AND SIGNED THIS 13TH DAY OF JANUARY, 2025.

.....

R. LAGAT-KORIR

JUDGE

Ruling in the absence of the Respondents and in the presence of Mr. Njeru for the State and Siele (Court Assistant).

