



REPUBLIC OF KENYA



**Lubanga v Republic (Criminal Revision E455 of 2024)
[2024] KEHC 14966 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14966 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E455 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

JOSEPH LUBANGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Mugun for the state

1. The applicant was charged with the offence of transportation of alcoholic drinks that do not conform to the requirements of the *alcoholic drinks and control Act*, contrary to section 27(a)(b) as read with section 4 of the said *Act* of 2010.
2. The applicant pleaded guilty to the offence before Hon. C.Wattimah on 6th August, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 100,000/= and in default 1-year 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. On rehabilitation, the report recorded that the applicant has completed 3 months in prison. It is stated that he has been guided spiritually and as part of his involvement, that he has taken on responsibilities of general compound cleaning, demonstrating his willingness to engage productively within the prison community. That through these duties, he is learning discipline, responsibility, and the value of constructive labor, which are essential components of his rehabilitation process.



5. On the Applicant's attitude towards the offence, the report recorded that he is remorseful and he is praying for a chance to complete the remainder of the sentence through non-custodial sentence. He regrets that while carrying out his daily work, he unknowingly transported illicit alcohol for a customer who later fled, leaving him to face the consequences alone. He lacks the financial means to pay the fine required for his release.
6. The Probation officer concluded that the applicant is currently serving a one-year sentence because he was unable to pay a fine of Kshs. 80,000/=. He recommended that the applicant be considered to serve community service order, to be served at Chief Office Likuyani Location for the remaining period of five months.
7. 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.
8. The *Community Service Orders Act* provides courts with an important sentencing alternative. Under this law, judges have the authority to order offenders to perform community service rather than serve time in prison. This option is available in cases where the offense carries a maximum prison sentence of up to three years. Additionally, even for offenses that could result in more than three years of imprisonment, the court may determine that it's more appropriate for the offender to serve some of their sentence by conducting unpaid public work within the community. This provision gives courts the flexibility to choose rehabilitative alternatives to incarceration when deemed suitable for the offender and the circumstances of the case.
9. Having meticulously examined the pertinent facts, this Court finds the present case squarely aligns with the rehabilitative objectives enshrined in the *Community Service Act*, warranting the application of non-custodial measures in lieu of imprisonment. Based on the cogent recommendations set forth in the probation officer's report, this Court hereby directs that the applicant undertake community service at the Office of the Chief, Likuyani Location, for a duration of five months. To ensure proper oversight and accountability, the designated supervisor shall submit monthly progress reports to this Court through the probation officer. This measured approach serves the dual purpose of rehabilitation and community reintegration. However, the Court emphasizes that this dispensation is contingent upon strict compliance; any contravention of the prescribed conditions shall result in the immediate revocation of the community service order and reinstatement of custodial sanctions. This disposition strikes an appropriate balance between societal protection and offender rehabilitation.

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

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R. NYAKUNDI

JUDGE

