



**Chepkemboi v Republic (Criminal Revision E177 of 2025)
[2025] KEHC 10978 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E177 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

ELIZABETH CHEPKEMBOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of being possession alcoholic drinks. The brief facts are on the 24th day of May 2025, at around 1900hrs at Kambi Thomas area in Turbo sub county within Uasin Gishu county Elizabeth Chepkemboi was found being in possession of alcoholic drinks to wit 22 litres of chang'aa having not been prepared in accordance with the *alcoholic drinks control Act* No. 4 of 2010.
2. She pleaded guilty to the offence convicted and sentenced to a fine of 40,000 in default 12 months' imprisonment. She has now applied for her sentence to be reviewed and the remainder of the sentence of 6 months' at Kapsaos Chief's office.

Decision

3. This application is based on the provisions of the *criminal procedure code* namely Section 357, 362, 364 as read with 382. The *constitution* also provides under Art 50(2)(p) (q) as follows:
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
 - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.



4. The same *constitution* in Art 50(6)(a)(b) expressly states as follows:

A person who is convicted of a criminal offence may petition the High Court for a new trial if-

- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
- b. new and compelling evidence has become available.

5. This application is based on the social inquiry report dated 22nd July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant

Current Home And Personal Circumstances

The inmate was born in 1991 to one John Akurowa and one Esther Achiken. The inmate hails from Kapsaos location in Kiplombe Sub-location in Turbo Sub-county. She is the 1st born in a family of 12 siblings. She was attended Kapseret primary school and dropped in class 7. She later got married to the late Ismael Masheti and together sired 3 children. She was involved in casual labor until her arrest. The inmate is of good health and does not take alcohol. The family members stated that the inmate is hardworking and responsible. The local administration is concern with issue of alcohol but believes the inmate has changed and can be rehabilitated within the community. There was no criminal history.

Prison Assessment, Rehabilitation, And Re-integration

The inmate is involved in general cleaning at the prison. Having been in prison more than two months she states that he has changed and ready to engage in legal business. The prison records indicate that the inmate is suitable for an early release. The local administrators are not against the inmate serving her remaining sentence in the community. The family and community are willing to be part of rehabilitation. Inmates family indicated the inmate is welcome home and are willing to assist her meet her needs.

Offenders Attitude Towards Non-custodial Measures

The inmate is remorseful and takes responsibility for her offense. She believes the period he has served in prison has helped her change her behavior. She is ready to venture into a legal business to earn a living. The inmate is ready to serve the community if the court considers her for an early release.

Recommendations

My Lord, the inmate can be considered for an early release and be placed on community service at Kapsaos Chiefs office for a period of 6 months. This is subject to this honorable courts discretion

6. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The *sentence policy guidelines of the judiciary* 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:



- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
7. In a documented research by Chrispinus Adenya Aben entitled *Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County* 2011. He made the following observations: First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
 8. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990).

“The law is without doubt a remedy for great evils, yet it brings with it evils of its own”.
(Subbrano V.C.G. 1993).

There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).

9. Rule 8.2 of the *Tokyo rules* on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.



10. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
11. In the instance case am hopeful that the review of custodial sentence and substitution of it with that of community service at Kapsaos Chief's office will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 6 months' being the balance of the custodial sentence. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 24TH DAY OF JULY 2025.

R. NYAKUNDI

JUDGE

Representation:-

M/s Sidi for the State

