



REPUBLIC OF KENYA



KENYA LAW
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**Chelagat v Republic (Criminal Revision E174 of 2025)
[2025] KEHC 11019 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E174 OF 2025**

RN NYAKUNDI, J

JULY 24, 2025

BETWEEN

NELLY CHELAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of being possession of alcoholic drinks. The brief facts are on the 24th day of May 2025 at around 2100hrs at Kaptangalas area in Turbo sub county within Uasin Gishu county Nelly Chelagat was found being possession of alcoholic drinks to wit 17 litres of *chang'aa* having not been prepared in accordance with the [Alcoholic Drinks Control Act](#) No. 4 of 2010. She pleaded guilty to the offence convicted and sentenced to a fine of 30,000 in default 8 months imprisonment. She has now applied for her sentence to be reviewed and the remainder of the sentence of 4 months at Sigowet primary school.

Decision

2. 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.
3. 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.
4. This application is based on the social inquiry report dated 15th 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

My Lord, the inmate is the daughter of David Tuwei and Sally Tuwei, the family owns a nine-acre picce of land in in Kaptembei Nandi. She is the 4th Born in a Family of eight. She was never married but with five children who are still schooling, she was a vegetable vender before her arrest. She has been in contact with her family and they have visited her at the prison. Her siblings spoke well of her their prayer is that she be given a non-custodial sentence so that she can take care of her children. They are willing to liaise with our office in the rehabilitation and supervision of the offender in the community.

Prison Assessment, Rehabilitation, and Re-integration

Your Lordship, the inmate was involved farming activities during her stay in prison. Prison authorities have nothing negative to say about her

Offender's Attitude towards Non-custodial Measures

My Lordship, the inmate is very remorseful and pleads for forgiveness she is very much ready to pay for her deeds through community service at Sigowet primary school.

Recommendations

Your Lordship, the inmate before court is a 43 years old woman who was sentenced for a period of eight months imprisonment for the offence of being in possession of alcoholic drinks. She is a single mother of five children. Prior to her arrest, she was vending vegetables. She owns up to the offence committed and is remorseful praying for court's leniency. Considering the above, we recommend that she be placed on community service orders at Sigowet Primary for a period of four months.

5. 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.
6. 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).
 7. 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 PF, 1990*). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (*Subbrano VCG. 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*).
 8. 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.
 9. 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.
 10. In the instance case am hopeful that the review of custodial sentence and substitution of it with that of community service at Sigowet Primary will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 4 months being the balance of the custodial sentence. Orders accordingly.

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



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R. NYAKUNDI

JUDGE

