



**Chepkoech v Republic (Revision Case E173 of 2025)
[2025] KEHC 11054 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11054 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
REVISION CASE E173 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

PATROBA CHEPKOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of manufacturing of alcoholic drinks without license. The brief facts are on the 15th day of May 2025, at around 1825hrs at Kaplelach area in Turbo sub county within Uasin gishu county Patroba Chepkoech was found manufacturing chang'aa to wit 10 litres using the following apparatus four aluminum sufurias, one stainless steel basin, two pieces of blankets, Kangara to wit 20 litres and two partly burnt pieces of wood without liquor license. She pleaded guilty to the offence convicted and sentenced to 8 months imprisonment.

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 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 is 48 years old sentenced for a period of 6 months for the offence of selling alcoholic drinks without license. She hails from Kiplombe sub-location in Uasin Gishu county. The inmate is the 2nd born in a family of nine siblings. She is the daughter to David Kosgei and the late Linah Kosgei of Kaplelach village. The inmate is a standard 7 dropout. She is a single mother of five. The inmate comes from a humble background and was involved in casual jobs before her arrest. The inmate is unwell and has a big growth in her stomach. She has been undergoing treatment at the prison and plans are underway to have her undergo a surgery. The family members requests for her early release citing her health condition.

The family members stated that the inmate is hardworking and responsible. They believe the period he has served in prison has helped her change her behavior. 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 fit for release and needs assistance to undergo a surgery. 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 son 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 him for a non-custodial sentence.

Recommendations

My Lord, the inmate can be considered for a conditional discharge citing her health condition. This is subject to this honorable courts discretion.



4. 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.
4. 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).
5. 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).
6. 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.

7. 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.
8. From the provisions of the Tokyo Rules deterrence is not the only objective of sentencing. Supposedly sentencing is individualized hence is a case to case basis. In the case at bar the probation officers report is meant to guide the court in exercising discretion in appropriate cases to review the custodial sentence by substituting it with non-custodial. One of the pre-dominant objective in this regard is rehabilitation and transformation of the offender. In this respect rehabilitation refers to the process of addressing the underline causes of the criminal behavior of the offender so as to have him/her integrated to the community. It is presumed that delinquent behavior of a human being is never a permanent character. It is possible to have a complete paradigm shift from wrong doing or acts of being in breach of the law with that of obedience to the law. The non-custodial sentences like community service orders and probation emphasis on restorative justice approaches to crime.
9. According to the recommendation of the probation officer the applicant is said to be 48 years old and her personal circumstances are indicative of issues which touch on his health rights. The question of review relates to the intersection of health rights and sentencing, specifically regarding the impact of deterrence on health outcomes, and the potential for conflict between these concepts. A key consideration is whether a sentencing goal of deterrence can be achieved without infringing upon the fundamental right to health, especially within the prison system.
10. For those reasons I exercise discretion to discharge the applicant. She is at liberty unless otherwise lawfully held.

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

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R. NYAKUNDI
JUDGE

