



**Cheshire v Republic (Criminal Revision E178 of 2025)  
[2025] KEHC 10981 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10981 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E178 OF 2025  
RN NYAKUNDI, J  
JULY 24, 2025**

**BETWEEN**

**MESHACK KIMTAI CHESIRE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged of manufacturing of alcoholic drinks without license. The brief facts are on the 30<sup>th</sup> day of May 2025 at around 1910hrs at Kaplelach area in Turbo sub county within Uasin Gishu county you were found manufacturing chang'aa to wit 10 litres using the following apparatus five medium size aluminium sufurias wrapped with cloth material, 20 litres of kangara, three pieces of partly burnt firewood and one plastic bucket without liquor license. She pleaded guilty to the offence convicted and sentenced to a fine of 50,000 in default 6 months' imprisonment. She has now applied for her sentence to be reviewed and the remainder of the sentence of 2 months at Eldoret probation station.

**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 22<sup>nd</sup> 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 42 years old. She hails from Kiplombe location in Turbo Sub-county. She is the 2<sup>nd</sup> born in a family of five siblings. The inmate is married to one Daniel Kimeli and together sired 5 children. Most of the children are school going and in need of their mother's caregiving responsibilities. She attended Chepsunoi primary and joined Chepsunoi secondary but dropped in form two due to school fees challenges. She is of good health. The inmate comes from a humble family background. She was said to be a responsible mother.

#### **Prison Assessment, Rehabilitation, and Re-integration**

The inmate is involved in Kitchen activities at the Prison. Prison records indicate that the inmate is fit for release. The local administrators are concerned with issues of alcoholic drinks in the area but hope the inmate will focus on other socio-economic activities to support her family. The family is willing to be part of rehabilitation.

#### **Offenders Attitude Towards Non-custodial Measures**

The inmate is remorseful and takes responsibility for her offence. He requests to be allowed to serve the remaining period in the community. He promises never to re-offend.

#### **Recommendations**

My Lord, the inmate is remorseful, and the home environment is favorable for her rehabilitation. Her sentence can be reviewed and can serve Community Service Order for 2 months at Eldoret probation Station subject to this honorable court's discretion.

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 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).
  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 laxed 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 Eldoret probation station will contribute towards promoting the domain of



non-custodial sentence. The sentencing recommended by probation officer is that of 2 months being the balance of the custodial sentence. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 24<sup>TH</sup> DAY OF JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

