



REPUBLIC OF KENYA



KENYA LAW
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**Okumu v Republic (Criminal Revision E126 of 2025)
[2025] KEHC 10622 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E126 OF 2025
RN NYAKUNDI, J
JULY 22, 2025**

BETWEEN

JOSEPH OKUMU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with the offence of being in possession of alcoholic drinks. The brief facts are on the 9th day of May 2025, at around 1856hrs at Kapkoros, Turbo sub-county, within Uasin Gishu county, Joseph Okumu was found being in possession of alcoholic drinks to wit 60 litres of busaa and 5 liters of chang'aa having not been prepared in accordance with the [alcoholic drinks control Act](#) no. 4 of 2010.
2. He pleaded guilty to the offence, convicted and sentenced to a fine of 33,000 in default 7 months' imprisonment. He has now applied for his sentence to be reviewed and the reminder of the sentence of 3 months at Baharini police station

Analysis and Determination

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 21st 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 the son of the late Swaldo Apaa and Sofia Nanucho who resides in Busia county in a 14-acre piece of land doing farming. He is the first born of nine siblings who are all grown-ups and working in different areas. He is married to Fidelis Ajuma and are blessed with three children; Windrose (22), Brian (20) and Scovia (18). And he's the sole provider of the family. He enjoys a healthy family relationship both with his wife and children and the extended family at large who he says are willing to take him back. The inmate finished his primary in the year 1995 at Apokor primary school and did not continue and later he moved to Eldoret town where he secured a job at Kenya pipelines until 2009 and from then he has been working as a manual laborer till his time of arrest. The inmate uses alcohol and cigarettes. He is also sick suffering from kidney failure and chest pains. The inmate has been maintaining contact with his family and friends who are ready to welcome him back and help him resettle in the community.

Prison Assessment, Rehabilitation And Re-integration:

The inmate states that he has learned to be discipline during the time he has served in prison, the importance of freedom and plans to go and look for a better job while he's out of prison. More so he has gained spiritually nourishment from the prison.

Offender's Attitude Towards Non-custodial

The offender is willing to serve a non-custodial sentence and appreciates it.

Recommendations

Your Lordship, considering the fact that the inmate owns up to the offence committed and he is remorseful, he has undergone rehabilitation in prison and his family willing to welcome him back and help him resettle in the community. Therefore, I recommend that he be placed on three months CSO at Baharini Police Station where he'll be supervised by the OCS Baharini for that duration.

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 there is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.

8. In the instance case, I am hopeful that the review of custodial sentence and substitution of it with that of community service at Baharini Police station will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 3 months being the balance of the custodial sentence. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 22ND JULY 2025

R. NYAKUNDI

JUDGE

Representation:

M/s Sidi for the State

