



**Chelagat v Republic (Criminal Revision E060 of 2024)
[2024] KEHC 4288 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E060 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

FREMY CHELAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of selling alcohol drinks without license contrary to section 89(1) (b) as read with section 64 of Uasin Gishu County Alcoholic Drinks Act 2014. The particulars of the offence are that on the 18th day of January, 2024 at around 13:00hrs at Kilimani location in Turbo Sub- County within Uasin Gishu County was found selling chang'aa to wit 3 litres without a liquor license
2. The applicant pleaded guilty to the offence before Hon. P.N. Areri on 19th January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve one year imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the *Criminal Procedure Code* as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a)&(b) of *the Constitution*.
4. The applicant seeks a sentence review based on the probation report filed on 4th April, 2024. According to the said report, it is said that the applicant has expressed remorse over the offence. The probation officer indicated that the applicant is a class eight drop out and a mother of four young children. That her husband passed on in 2021 and she has been left to meet her family needs single handedly. She expressed remorse over her actions and promised to reform.
5. In view of the foregoing facts, the recommendation advanced by the Probation officer is that the applicant can be placed to perform community service at Kiplombe location chief's office for a period of six months where she will undertake unpaid public work.



6. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
7. Further to the aforementioned, the [Community Service Orders Act](#) makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
8. The overall assessment of the facts of this case is such that it fits the legal framework of the Community Service Act as an alternative sentence to imprisonment. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve her sentence at Kiplombe Location chief's office for a period of six months. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 11TH DAY OF APRIL 2024.

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R. NYAKUNDI

JUDGE

