



REPUBLIC OF KENYA



**Ekaale v Republic (Criminal Revision E047 of 2024)
[2024] KEHC 5679 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E047 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

LISTER EKAALÉ APPLICANT

AND

REPUBLIC RESPONDENT

*(Being Review on Sentence from the Decision in Cr. E684 of
2023 by N.M Idaga (Principal Magistrate) dated 10.11. 2023)*

RULING

1. The applicant was charged with the offence of being in possession of alcoholic drink that does not conform to the requirements of Section 27(1)(b) as read with Section 27(4) of the [Alcoholic Drinks and Control Act](#) No. 4 of 2010.
2. The applicant pleaded guilty to the offence before Hon. N. Idagwa on 10th November, 2023 and as a consequence, she was convicted on his own plea of guilty and sentenced to a fine of Kshs. 20,000 and in default 1 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 sentence review report on record. The report is responsive. According to the report, the applicant is remorseful and pleads for leniency. That she is 21 years old and a mother of two children. The probation officer recommends him for a community service Order at Kanamkemer chief's office. I am of the considered view that the courts should embrace non-custodial sentences where circumstances require it. I consider this as one of the cases where a non-custodial sentence would have sufficed.



5. 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.

With regard with this case, it appears that there was more emphasis on deterrence than rehabilitation. The applicant in this case had no previous convictions. He pleaded guilty to the charge which could have contributed to a reduction of sentence. The circumstances in which the crime was committed is undoubtedly such as to render it necessary such as to render to impose a non- custodial sentence. The Fact that the Applicant is relatively young and that she is remorseful is a factor which is favourable to the Applicant that appropriately releasing her to the home based rehabilitation would not be prejudicial to society.

6. 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.
7. Having gone through the facts of the present case and particularly the charge in question, the circumstances fit 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 a community service order for a period of three months at Kanamkemer chief's office. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and 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 LODWAR THIS 17TH DAY OF MAY 2024.

In the Presence of:

Applicant

Jonathan K. Bungei for the State

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R. NYAKUNDI

JUDGE

