



**Luambi v Republic (Criminal Application E011 of 2024)
[2024] KEHC 5678 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL APPLICATION E011 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

LUIS LUAMBI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being Review on Sentence from the Decision in Cr.
Case no E240 of 2024 by Hon. N. Idagwa on 18.2.2024)*

RULING

Coram: Before Justice R. Nyakundi
Mr. Jonathan K. Bungei for the State

1. The applicant was charged with the offence of failing to Display Liquor License contrary to Section 24 (1) as read with Section 64 of the *Turkana County Alcoholic Drinks Control Act* No.7 of 2014. On the 14.3.2024 at around 1900 hours at Knamkemer Location in Turkana Central sub-County within Turkana County was found selling assorted alcoholic drinks at Squirrel Lounge without displaying liquor license contrary to the act.
2. He is aggrieved with the sentence and file a notice of motion for review of this court. The application is grounded as follows:
 - a. That the applicant is a first offender
 - b. That the applicant is a first year student at Turkana University college, taking bachelor in education art
 - c. That the applicant was hustling to certify his well-being in school



- d. That the applicant was charged with an offence of failing to display liquor license c/s 24(1) as read with section 64 of Turkana County Alcoholic drink criminal act of 2014, and sentence (1)one year imprisonment. In criminal case file No. E243 of 2024 at Lodwar by Hon.Idagwa.
- e. That what I have deponed herein is true and correct to the best of my knowledge.
In support of the application is an affidavit which states as follows:
 - a. That I am a Kenyan male adult of sound mind and dully competent to swear this affidavit in a court of law
 - b. That I was charged with an offence of failing to display liquor lisencc c/s 24(1) as read with section 64 of Turkana County Alcoholic drink criminal Act 1014 and sentence (1) one-year imprisonment in criminal file no E0243 of 2023 at Lodwar by Hon.Idagwa
 - c. That the Applicant urge the honorable court to review his case
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 sentence review. On record I have a sentence review report. The report is responsive. The probation officer recommends that the applicant should serve a non-custodial sentence on probation. That the applicant having sometime in custody has learned a lot and he has equally lost a lot. I have considered the report and the offence in question.
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 misdemeanor.
 - 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.
6. The applicant seeks a sentence review based on the sentence review application on record. The report is responsive. According to the report, the applicant is undertaking a course at Turkana University prior to his arrest for this offence.
7. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -

Turning to the issue of sentence the court wants to remind itself and the Lower Court that sentencing should always follow the provisions of the statute, the Sentencing policy guidelines published in 2023 and the Principles laid down in the various case law. It is trite that the basis on which Appeal's Court exercise jurisdiction to review or overturn the sentence is basically on factors of the sentence being manifestly excessive or in adequate likely to send shock waves to the public and the offender. The constitution 2010 also enacted Article 25 (a) dealing with rights and fundamental freedoms guarantees of citizens from torture and cruel, inhuman, or degrading treatment or punishment. That fundamental



right should be borne in mind in sentencing an offender upon conviction for that particular offence. In some also as a matter of principle in sentencing any verdict, sanction or punishment must be proportionate to the crime for which the accused person has been convicted. It is also clear from the objectives and principles of sentencing, that the accused being a first offender or has entered a plea of guilty to the offence should count for something to reduce his or her sentence. Generally, for first offenders, it is very unlikely that if they are placed on non-custodial sentence they

8. would be re-offending hence impacting negatively public law and order in our communities. The trial courts ought to focus more on rehabilitation of offenders than deterrence with lengthy sentences that may not aid in the transformation of the offender. There are various sentencing provided in our penal system which are rarely invoked as measures to punish crime by the trial courts. The non-custodial measures are fashioned around the Tokyo rules 8.1 & 8.2 (a-m) which provide *inter-alia* Verbal sanctions, such as admonition, reprimand and warning Conditional discharge Status Penalties Economic sanction and donetary penalties, such as fines and day-fines Confiscation or an expropriation order Restitution to the victim or a compensation order Suspended or differed sentence Probation and judicial supervision A community service order Referral to an attendance center House arrest Any other mode of non-institutional treatment, or Some combination of these measures.

Just as the offender's person need and interests have to be weighed against society's interest at the pre-trial stage, so the offenders "rehabilitative needs" at the sentencing stage must be balanced against eh need to protect society and "the interests of the victim the list of non-custodial measures in Rule 8.2 while not exhaustive, contains a wide range of non-custodial measures to suit different circumstances and achieve different objectives.

9. 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.
10. Having gone through the facts of the present case and particularly the age of the applicant, the circumstances fit the legal framework of the [Community Service Act](#) as an alternative sentence to imprisonment. He is fairly a young person with a whole life ahead of him and a non-custodial sentence would be greatly beneficial with proper guidance and counselling. However, examining he arguments for and against non-custodial sentence this is a case which calls for application of the proportionality test. What then is the right verdict? It is worth noting that the Applicant is an undergraduate at Turkana University and his availability to attend classes would give effect to him not loosing out in his educational program. The upshot of it, is to review the sentence to the period already served. He is at liberty unless otherwise lawfully held.
11. Orders Accordingly.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 17TH DAY OF MAY 2024.

In the Presence of

Mr. Jonathan K. Bungei for the State

Appellant

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R. NYAKUNDI
JUDGE

