



REPUBLIC OF KENYA



**Akal v Republic (Criminal Revision E120 of 2024)
[2024] KEHC 8461 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E120 OF 2024
RN NYAKUNDI, J
JULY 11, 2024**

BETWEEN

JACINTA AKAL APPLICANT

AND

REPUBLIC RESPONDENT

(Coram: Before Justice R. Nyakundi Mr. Yusuf for the state)

RULING

1. The applicant was charged with the offence of being in possession of illegal Alcoholic drinks that does not conform to the requirements of section B 31(1) as read with section 31(3) of Turkana County Drinks Control Act No 7 of 2014.
2. The applicant pleaded guilty to the offence and was convicted on her own plea of guilty. As a consequence, she was sentenced to a fine of thirty thousand and in default 7 months 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. The report indicates that the applicant engaged in illegal alcohol due to financial constrains in the home. The home background undergoes economic restrains. She appreciates non-custodial sentence. That she was initially married to Joseph Akal who died and left her with four children. After her husband's demise the husband's family send her away with the kids. His brother looks after her including paying for their school fees. With this background the report recommended a community service at St. Mary's Primary School, Kawalase for one month.



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.
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, the circumstances fit the legal framework of the [Community Service Act](#) as an alternative sentence to imprisonment. She is one person having other depending on her, she is remorseful and she is a first offender. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for one month at St. Mary's Primary School, Kawalase. A month's 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 11TH DAY OF JULY 2024.

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R. NYAKUNDI

JUDGE

