



**Akaran v Republic (Criminal Revision E136 of 2024)  
[2024] KEHC 8186 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8186 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E136 OF 2024  
RN NYAKUNDI, J  
JULY 9, 2024**

**BETWEEN**

**NANCY AKARAN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**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 his 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 has urged the court to consider the sentence review report on record and grant her a non-custodial sentence. The report is positive. The circumstances of the offence as per the report are that the applicant sells alcohol in order to provide for her children. She is the first born of five children. Her father is deceased and the mother is still alive. She is married and has four children. Her husband is a boda boda rider. Her two children are schooling and the other two stay at home. She is 32 years old and she has admitted to her mistakes and promises to change and engage in lawful business. On the basis of her age, gender, family needs and recognition of her mistakes, the probation officer recommended that she be given a chance to serve a non-custodial sentence, which would be served at Kanam Primary school.



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. Additionally, the *Community Service Orders Act* equally 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 are a perfect fit for the legal framework of the Community Service Act as an alternative sentence to imprisonment. The factors to be considered in imposing a non-custodial sentence have revealed themselves in the circumstances of the case. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for four months at Kanam Primary School. 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 9TH DAY OF JULY 2024.**

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**R. NYAKUNDI**  
**JUDGE**

