



REPUBLIC OF KENYA



KENYA LAW
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**Ekai v Republic (Criminal Revision E135 of 2024)
[2024] KEHC 8185 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E135 OF 2024
RN NYAKUNDI, J
JULY 9, 2024**

BETWEEN

CHRISTINE EKAI 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 requirement of Section B 27(1) (B) as read with Section 27(4) of [Alcoholic Drinks Control Act](#) No. 4 of [Alcoholic Drinks Control Act](#) No. 4 of 2010.
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 forty thousand and in default 12 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 him a non-custodial sentence. The report is responsive. The circumstances of the offence as per the report are that the applicant was selling Kaada in order to get money and feed her young family, take care of her elderly sickly mother and also pay the school fees for her children.
5. The Probation officer stated that the applicant is a 24-year-old who has never stepped in school due to financial constraints at home. She sells Kaada in order to feed children and take care of her sickly old-aged other. She is married with two children and her husband is a boda boda rider. Her children are young and in need of care and protection of their mother. The officer conclude that the applicant has admitted to her mistakes and has pleaded for leniency from the honorable court. She has undertaken to



change and engage in lawful business. On the basis of her age, gender and recognition of her mistakes, she was recommended for a non-custodial sentence, which would be served at Kanam Primary school.

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. 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.
8. 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 circumstances are a perfect fit for a non-custodial sentence. The factors to be considered in imposing a non-custodial sentence wholesomely have all become evident in the instant 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

