



**Etorong v Republic (Criminal Revision E129 of 2024)
[2024] KEHC 8358 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E129 OF 2024
RN NYAKUNDI, J
JULY 9, 2024**

BETWEEN

LAWRENCE ETORONG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Onkoba for the state

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 fifteen thousand and in default 6 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 approached this court for a sentence review on the basis of the sentence review report on record. The report is positive. According to the report, the applicant is a form two drop out. His siblings dropped out of school due to lack of school fees. He was working at a car wash in Joloya before being convicted. His sister does not have a job and so is her husband. They do small jobs for wages. That the family is economically challenged. The report further records that the applicant appreciated non-custodial measures. The Prison authorities also stated that the applicant is disciplined and stays out of trouble according to the prison warders. He needs guidance on taking caution.



5. In summary the Probation officer stated that the applicant is a 32-year-old man. His parents are deceased and that he was at his neighbor's home where he was convicted after the police searched the neighbor's house and found the illegal alcohol.
6. The officer recommended that the applicant serve a community service at Kanamkemer Primary school for one month.
7. 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.
8. 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.
9. 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. The circumstances favor him for reasons that he was found in the house which had alcohol. He has nonetheless admitted to the charge. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for one month at Kanamkemer for one month. A month's report 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

