



**Kepa v Republic (Criminal Revision E134 of 2024)
[2024] KEHC 8361 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E134 OF 2024
RN NYAKUNDI, J**

JULY 9, 2024

BETWEEN

LOPEYOK KEPA 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 prays that this court may consider a sentence review based on the sentence review report on record. The report is responsive. The circumstances of the offence as per the report are that the applicant was looking after the drinks that were given to him by his friend. He is a 27 year old and he has never stepped to any school due to financial restraints. He is married and has five children who are schooling at [Particulars withheld] primary school. He is the sole provider of the family and currently does not know how his family is doing.
5. The applicant admitted to his mistake and pleaded for leniency from this honorable court. He promises to change and continue with his masonry work. With these facts, the probation officer recommended a community service order at Nakiria primary school for a period of five months.



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 fit 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 applicant has admitted to the charge and such is a factor to be equally considered in imposing a non-custodial sentence. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for five months at Nakiria 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

