



**Loima v Republic (Criminal Revision E123 of 2024)
[2024] KEHC 12951 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E123 OF 2024
RN NYAKUNDI, J
OCTOBER 25, 2024**

BETWEEN

WILSON LOIMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Yusuf 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 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, he 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. He is an orphan who lives with his only remaining sister after his other three siblings dies. The late siblings left behind children who are under his care and his sister. He is married with no children. The report concluded that the applicant is 26 years old and he is yet to start a life. He has the responsibility of taking care of his nephews and nieces. That keeping him in prison will risk the wellbeing of the 18 children under his care. With this



background the report recommended a community service at Salvation Army Secondary school for three months.

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. He is a young person with a whole life ahead of him and a non-custodial sentence would be greatly beneficial with proper guidance and counselling. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for three months at Salvation Army Secondary. 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 25TH DAY OF OCTOBER 2024.

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R. NYAKUNDI

JUDGE

