



**Maisaa v Republic (Criminal Revision E113 of 2024)
[2024] KEHC 12971 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12971 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E113 OF 2024
RN NYAKUNDI, J
OCTOBER 25, 2024**

BETWEEN

CHRISTINE MAISAA 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 requirement of Section B 31(1) (B) as read with Section 31(3) of [Alcoholic Drinks Control Act](#) No. 7 of 2014.
2. The applicant pleaded guilty to the offence and was convicted on her 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. According to the report, the applicant is the sole provider to her young family and she sells the illegal drinks in order to provide for her children. It was indicated that she is remorseful and pleaded for leniency from the court. She is a 19-year-old and the last born of five children. The Probation officer recommended that she serves a one-month community service order at Kawalase primary school under the supervision of the school head teacher.
5. For this court to impose a non-custodial sentence, there are various factors which need consideration:



- 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. The circumstances of the instant case are however unique and I share a different view. The duration served by the applicant in custody in my opinion is commensurate to the factual matrix as presented. She has served quite a substantial bit of her sentence and it is only fair that she is allowed to go home and take care of her family. Holding her in custody would not live up to the objectives of sentencing when considered wholesomely. Therefore, having carefully considered the record and the facts, I am convinced that the applicant has since learned her lesson while in custody. The upshot of it is that the sentence is hereby reviewed to the period already served in custody. The applicant shall be set at liberty, unless she is otherwise lawfully held.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 25TH DAY OF OCTOBER 2024.

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R. NYAKUNDI

JUDGE

