



**Cheptoo v Republic (Criminal Revision E077 of 2023)
[2023] KEHC 23799 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E077 OF 2023
JK SERGON, J
OCTOBER 19, 2023**

BETWEEN

DAISY CHEPTOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Daisy Cheptoo, hereinafter referred to as the Applicant was convicted of two counts of the offence of being in possession of alcoholic drinks for sale without a licence contrary to section 27 (1) as read with section 27 (4) of the *Alcoholic Drinks Act* No 4 of 2010.
2. On February 15, 2023, Hon Aziza Ajwang, the Learned Senior Resident Magistrate sentenced the Applicant to pay a fine of Kshs 50,000 in default to serve eighteen (18) months imprisonment.
3. The proceedings relating to the aforesaid case, that is Kericho CM Criminal Case No 553 of 2023 Republic-vs-Daisy Cheptoo were placed before this Court pursuant to the provisions of section 362 and 364 of the *Criminal Procedure Code*.
4. The Probation Officer filed a sentence review report on July 24, 2023. In the said report it was noted that the applicant was remorseful. The family of the Applicant was in favour of a non-custodial sentence and therefore sought for this court's leniency. The Probation Officer noted that the current home environment is favourable for her release. The prison authorities were of the view that the applicant was suitable for release, the applicant while under incarceration was attached to the prison's kitchen as a cleaner and was learning how to rear chicken.
5. The probation officer based on her findings that the home environment was favourable for the Applicant's release, recommended that the applicant complete the remaining term of her sentence on Community Service Order (CSO).



6. The Applicant has so far served eight (8) months and she is remaining with ten (10) months to complete the default sentence.
7. Having carefully perused the proceedings of the trial Court, it is clear that Learned Trial Senior Resident Magistrate sentenced the Applicant to a fine of Kshs 50,000/= in default to serve eighteen (18) months imprisonment. It is apparent that the default sentence is improper under Section 28 (2) of the [Penal Code](#) where the maximum default sentence where a fine of Kshs 50,000/= is imposed is 6 months.
8. In the circumstances, this court is entitled to interfere with the default sentence. However, this Court will not interfere with the fine imposed of Kshs 50,000/=.
9. In the end, the sentence of eighteen (18) months is set aside and is substituted with a default sentence of four (4) months to run from the date of sentence i.e from February 15, 2023.
10. It is obvious that the convict namely:- Daisy Cheptoo having been in prison for the last eight (8) months has served the default sentence in full. I hereby order that Daisy Cheptoo should forth be released from prison unless lawfully held.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF OCTOBER, 2023.

.....

J.K. SERGON

JUDGE

