



**Kemei v Republic (Criminal Revision E098 of 2023)  
[2023] KEHC 23839 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23839 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E098 OF 2023  
JK SERGON, J  
OCTOBER 19, 2023**

**BETWEEN**

**BEATRICE KEMEI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Beatrice Kemei, hereinafter referred to as the applicant pleaded guilty to a charge of selling of alcoholic drinks without license contrary to section 7(1) (b) as read with section 62 of the [Alcoholic Drinks Control Act](#) No. 4 of 2010.
2. On February 1, 2023, Hon. B. R. Kipyegon, Learned Principal Magistrate sentenced the Applicant to a fine of Kshs. 100,000/= in default to serve 1 year imprisonment on Count 1 and a fine of Kshs. 20,000/= in default to serve 2 months imprisonment on Count 2.
3. The Proceedings relating to the aforesaid case, that is Kericho C.M.C C.R Case No. 349 of 2023 – Republic-vs-Beatrice Kemei 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 and promised not to re-offend but find legal ways of earning income. The prison authorities stated that the Applicant was favourable for immediate release, on a non-custodial sentence. The applicant’s family was willing to welcome her back home and support her towards reintegration and the area Assistant Chief was not opposed to her release. The probation officer therefore recommended that the applicant completes the remaining term of her sentence on Community Service Order (CSO).
5. I have already set out the sentence pronounced by the Learned Principal Magistrate. The Applicant has so far served seven (7) months. I have also noted that the learned Principal Magistrate did not indicate



whether the sentences were to run consecutively or concurrently. In the circumstances, the sentences herein should run concurrently. Consequently, the Applicant having served seven (8) months of the default sentence and she is remaining with five (4) months to complete her sentence.

6. Having considered the fact that the sentence review report is favourable. I have carefully examined the record and it is clear that the Applicant was sentenced to a fine of Kshs.100,000/= in default to serve 12 months. Under section 28 of the *Penal Code*, a default sentence in respect of a fine of Kshs.100,000/= is a maximum of 12 months. It is apparent that the applicant was sentenced to serve the maximum default sentence.
7. I find the default sentence to be inappropriate in the circumstance. In the end and in exercise of this court's revisionary power, I hereby set aside the default sentence of 12 months and substitute it with a default sentence of 8 months from the date of sentence.
8. The Applicant has so far served 8 months of the default sentence of 12 months.
9. Having reduced the default sentence to 8 months, it is clear that the applicant Namely: Beatrice Kemei has fully served the default sentence. She should be set free forthwith and released from custody unless lawfully held.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

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**J.K. SERGON**

