



REPUBLIC OF KENYA



KENYA LAW
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**Momanyi v Republic (Criminal Revision E051 of 2025)
[2025] KEHC 13308 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13308 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E051 OF 2025
WA OKWANY, J
SEPTEMBER 18, 2025**

BETWEEN

HESBON MOMANYI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a Revision of the Sentence from the Chief Magistrates' Court at Keroka CMCCR
No. 397 of 2025 meted by Hon. E.K. Nyutu Chief Magistrate on 23rd July 2025)*

RULING

1. The Applicant was convicted, on his own plea of guilty, for the offence of being in possession of alcoholic drinks without a license contrary to Section 27 (1) (b) as read with Section 27(4) of the *Alcoholic Drinks Act* No. 4 of 2010. The particulars of the charge were that on 10th June 2025 at Nyamasibi area in Masaba South Sub-County within Kisii County, was found in possession of 10 litres of Chang'aa for sale without a license. He was, upon conviction, sentenced to pay a fine of Kshs. 50,000/= or, in default, to serve 12 months imprisonment.
2. The Applicant filed the present Application dated 23rd July 2025 seeking a revision of sentence. The Application is supported by the Applicant's affidavit in which he avers that he is remorseful for the offence. He also states that he was not represented by counsel before the trial court and pleaded guilty to the charge without understanding the consequences of his plea. He adds that he is a first offender and that the sentence passed by the trial court was therefore harsh and excessive in the circumstances of the case.
3. The Respondent, who was represented at the hearing by Mr. Chirchir, Learned Prosecution Counsel, did not oppose the Application.
4. The main issue for determination is whether the Application is merited.



Analysis and Determination

5. The purpose of sentence was set out in *S v. Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35 thus: -

“Plainly, any sentence imposed must have deterrent and retributive force. But off course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the overriding ones.It is trite that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.”
6. Paragraph 23.8 of the [Judiciary Sentencing Policy Guidelines](#) sets out some of the Mitigating Factors to be considered during sentencing as follows: -
 - (7) Being a first offender.
 - (8) Remorsefulness.
 - (9) ...
 - (10) Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police
7. The Applicant herein was convicted for the offence under Section 27 of the [Alcoholic Drinks Act](#) No. 4 of 2010 which stipulates as follows:-
 27. Conformity with requirements
 - (4) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding five years, or to both.
8. The facts of this case reveal that the Applicant pleaded guilty at the earliest opportunity and therefore saved the court’s precious judicial time that could have been spent in a full hearing. In mitigation, he stated that he is remorseful for the offence. I find that these are factors that should be considered in an application for revision of sentence. I am guided by the decision in [Vinter and Others v. United Kingdom](#) (Application Nos. 66069/09, 130/10 and 3896/10) where the court held that it is inhuman treatment for the applicant who was remorseful and rehabilitated to remain in prison for the rest of his life
9. I note that the Applicant was sentenced on 23rd July 2025 and has therefore been in custody from the said date until the date of this ruling, I am of the view that the period he has served in prison is sufficient punishment for the said offence.
10. In the premises, I hereby exercise the High Court’s revisionary powers under Article 165 (6) and (7) of the [Constitution](#) and Sections 362 and 364 of the [Criminal Procedure Code](#) and allow the Application. The sentence imposed by the trial court being a fine of Kshs. 50,000/= or in default, 12 months’ imprisonment is hereby set aside and substituted with a sentence of imprisonment for the period that the Applicant has already served in prison.
11. I therefore direct that the Applicant be released from custody forthwith, unless he is otherwise lawfully held.
12. Orders accordingly.



RULING DATED AND DELIVERED AT NYAMIRA ON THIS 18TH DAY OF SEPTEMBER 2025.

W. A. OKWANY

JUDGE

