



**Agola v Republic (Criminal Revision E270 of 2025)  
[2025] KEHC 16394 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16394 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E270 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 14, 2025  
CORAM: BEFORE JUSTICE R. NYAKUNDI  
M/S SIDI KIRENGE FOR THE STATE**

**BETWEEN**

**CHRISTINE AGOLA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

M/s Sidi Kirenge for the State

1. The Applicant was charged of being in possession of alcoholic drinks contrary to Section 27(1)(b) as read with Section 27(4) of the *akn ke act 2010 4 Alcoholic Drinks Control Act* No. 4 of 2010. The brief facts are on the 26<sup>th</sup> day of September 2025, at around 1140hrs at Keroka area in Turbo Sub County within Uasin Gishu County was found in possession of alcoholic drinks to wit 21 litres of chang'aa having not been prepared in accordance with the *akn ke act 2010 4 alcoholic drinks Control Act* No. 4 of 2010. She pleaded guilty to the offence convicted and sentenced to a fine of Kshs. 20,000 = in default 6 months imprisonment.

**Decision**

2. This application has been considered under Art 50(2)(p)(q), 6(a)(b) as read with Section 362 & 364 of the Criminal Procedure Code.



3. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in *Bernard Gacheru v Republic* [2002] eKLR the Court held that:

“It is now settled law, following several authorities by this Court and by the high Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, the sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already states is shown to exist.”

4. This was also the position taken by the Court in *S vs. Malgas* 2001 (1) SACR 469 (SCA) held that:

“A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial Court, approach the question of sentence as if it were the trial Court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial Court...However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial Court. It may do so when the disparity between the sentence of the trial Court and the sentence which the appellate Court would have imposed had it been the trial Court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate”

5. The doctrine of proportionality in sentencing is one of the fundamental aspect which actually must define the trial Courts discretion in imposing a fair and appropriate sentence. The Court in *Tarry v Pryce* (1987) 24 A Crim R 394, 402 had this to say:

Although the discretionary aspect of sentencing is of great importance, there is to my mind no doubt that there is scope for a more scientific approach. A lack of consistency between sentencers dealing with run-of-the-mill cases cannot be supported by reliance on the discretionary power to sentence. The need for consistency in the punishment in like cases of like persons overrides the right of the sentencers to impose his idiosyncratic view.

6. From the foregoing, the factors that are relevant to the decision making of the issues raised in the application must be assessed within the principles which have been discussed elsewhere in this ruling. In matters of this nature, seriousness of a crime has two dimensions; harm and culpability. Harm refers to the injury done or risked by the act; culpability to the factors of intent, motive and circumstances that determine the extent to which the offender should be held accountable for the act.

7. I have weighed several factors and I take the view that the offence in question could have been better served in a non-custodial environment accompanied with counselling in a homebased social-cultural support. I therefore exercise discretion to review the sentence and the applicant to report to probation officer who have knowledge and experience on after care services. This order commands the officer in charge in prison to remove her from custody to serve the remainder of the sentence within the community.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025**

.....



**R. NYAKUNDI**  
**JUDGE**

