

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION NO. E246 OF 2025

JENIFFER OMONDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Sidi Kirenge for the State

RULING

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 Alcoholic Drinks Control Act No. 4 of 2010. The brief facts are on the 31st day of May 2025, at around 1257hrs at Moonshine area in Turbo Sub County within Uasin Gishu County was found in possession of alcoholic drinks to wit 10 litres of chang'aa having not been prepared in accordance with the alcoholic drinks Control Act No. 4 of 2010. She pleaded guilty to the offence convicted and sentenced 1 year 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 considered the entire record under the circumstance of the offence including the period served by the applicant. In summary, deterrence aims to prevent crime through the threat of punishment. This would necessitate that factors like the prevalence of the crime should be considered when sentencing an offender. Although there is no conclusive evidence as to how far deterrence works, it can play a limited role in punishment. People may learn from punishment, and it may thus provide a disincentive to crime. However, as noted above, a purely deterrence-based policy can result in harsh sentences. Proportionality considerations must therefore play a role in deciding the severity of punishment. Further, considering the inconclusive evidence regarding the relation between the severity of punishment and its deterrent effect, the legislature and the courts should be wary of increasing punishment as though deterrence were "an article of faith". The personal circumstances of the offender should also be considered.
8. Accordingly, given the circumstances of this offence it is important to mention that courts generally viewed first offender as those likely to respond to rehabilitation and avoid re-offending. It is for this reason I suspend the remaining period of the sentence imposed so that it can be served within the community protection and restoration. This means the applicant shall be set free forthwith from prison custody to home-based rehabilitation for the remainder of the period.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 14TH DAY OF
NOVEMBER 2025**

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**R. NYAKUNDI
JUDGE**