



**HM v Republic (Criminal Revision E279 of 2025)  
[2025] KEHC 17339 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17339 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E279 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 26, 2025**

**BETWEEN**

**HM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

M/s Sidi Kirenge for the State

1. The Applicant was charged with the offence of child neglect contrary to section 127(1)(a) of the *akn ke act 2001 8 Children Act*. the particulars of the offence are that the applicant between 1<sup>st</sup> April, 2025 and 12<sup>th</sup> September, 2025 at Olenguisse location, Kesses Sub County within Uasin Gishu County being a mother to AJ aged 8 years and TA aged 2 years abandoned them by denying them their right to health, being HIV positive refused to take attention of attending the medical clinic Act that caused suffering to their health.
2. The applicant was equally charged with an alternative charge of infringing a child right to health care contrary to section 9 as read with section 20 of the *akn ke act 2001 8 Children Act* with particulars being more less the same.
3. The trial court considered the offence and sentenced the applicant to 6 months and she has since approached this court for a sentence review. Consequently, the Probation Officer filed a presentence review report which had the following components:



## **A. Introduction And Sources Of Information**

This is a sentence review report concerning HM who was sentenced to Six Months in prison for the offence of Neglect of a Child Contrary to Section 152(1)(b) of the *akn ke act 2001 & Children Act* of 2022.

The report is based on findings from social inquiry interviews and a general assessment aimed at determining the inmate's suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret GK Prison, his family members, and the local area administration. Additionally, the lower court file was reviewed.

## **B. Current Home And Personal Circumstances**

The inmate is the Sixth-born in a family of nine Siblings, born to EE and EK both deceased. The family owns 2 points of land in [Particulars Withheld] Village. There is no previous criminal history in their family. The inmate is not married but blessed with four children. The inmate lives at their ancestral land in [Particulars Withheld] Village Uasin Gishu County. The family comes from a low socio-economic background. She has cordial ties with her family members, during his stay in prison, she has been in touch with her relatives through welfare phone and some has come to visit them.

## **C. Prison Rehabilitation**

While in custody, the inmate has been actively involved in the prison activities, working as a cleaner and also gained spiritual guidance. This role has played a significant part in instilling discipline, accountability, and a strong sense of personal responsibility. These skills are expected to support his rehabilitation and enhance his chances of leading a productive and honest life if granted a non-custodial sentence.

## **D. Offenders' Attitude And Impact Of Imprisonment**

The inmate takes full responsibility of the offence committed, she is willing to serve noncustodial sentence.

## **E. Conclusion**

Your Lordship, in light of the inmate's role as a breadwinner to her family, the progress made toward serving her custodial sentence, and her clear expression of remorse, there is a strong indication of her potential for rehabilitation. Furthermore, the presence of a supportive home environment provides a conducive foundation for successful reintegration through community-based correctional measures.

## **F. Recommendation**

The inmate may be considered to serve Community Service Order (CSO) for the remaining period of 2Months, to be served at Leinguse Primary School.

## **Decision**

4. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
  - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.



- b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
  - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
  - d) Protection of the community: - where the offender is likely to pose a threat to the community.
  - e) Offender's responsibility to third parties: - where there are people depending on the offender.
5. The *akn ke act 1998 10 Community Service Orders Act* empowers this Court to order an offender to perform unpaid community service in lieu of imprisonment. This sentencing option is available where the offence carries a maximum term of imprisonment not exceeding three years, or where the Court deems it appropriate that any portion of a longer sentence be served through community-based sanctions. The Act recognizes that certain offenders benefit more from structured rehabilitation within the community than from continued incarceration, particularly where there exists a strong support system and genuine prospects for reformation.
6. Having carefully reviewed the Sentence Review Report and the circumstances of this case, I am satisfied that the Applicant meets the criteria for a community-based sentence. She has already served three months in custody, during which she has demonstrated good conduct, worked as a cleaner, and gained spiritual guidance. The report establishes that she has a stable home environment at her ancestral land in [Particulars Withheld] Village where she lives with her four children. Her role as the breadwinner to her family creates significant responsibilities to third parties who depend on her. Significantly, both the prison authorities and local administration have endorsed her release on non-custodial terms. The Applicant has taken full responsibility for the offence committed and expressed genuine remorse, demonstrating her receptiveness to rehabilitative measures and her potential for successful reintegration into the community.
7. Accordingly, I find that the remaining period of two (2) months is appropriate and shall be served through community service. The Applicant is hereby ordered to perform unpaid community service at Leinguse Primary School under the direct supervision of a designated officer at the said facility. The supervising officer shall, in liaison with the probation department, submit monthly reports to this Court detailing the Applicant's compliance and progress. The Applicant must strictly adhere to all conditions of this order and ensure that she fulfills her parental obligations, particularly with regard to the healthcare needs of her children. Any breach of the conditions of this community service order shall result in immediate cancellation, and the Applicant shall be remanded to serve the remainder of her sentence in custody.
8. It is so ordered.

**SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025.**

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

