



REPUBLIC OF KENYA



KENYA LAW
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**Kimutai v Republic (Criminal Revision E378 of 2025)
[2025] KEHC 17333 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E378 OF 2025
RN NYAKUNDI, J
NOVEMBER 26, 2025**

BETWEEN

REUBEN KIMUTAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with being in possession of an alcoholic drink that does not conform to the requirements contrary to Section 27(1) (b) (3) and (4) of the *akn ke act 2010 4 Alcoholic Drinks Control Act 2010*. The brief facts of the case are that on the 31st day of October 2025 at Chebilot village in Soy Sub County Uasin Gishu willfully and unlawfully was found in possession of changaa to wit 10 litres that does not conform to the standard requirements in contravention of the said Act.
2. On the second count, the applicant was charged with the offence of Manufacturing alcoholic drinks without a licence contrary to Section 8(1) (i) as read with section 64 of Uasin Gishu County *akn ke act 2010 4 Alcoholic Drinks Control Act* of 2014. The facts are that on the 31st day of October 2025 at Chebilot area in Soy Sub-County within Uasin Gishu County the applicant was found with apparatus used for manufacturing chang'aa to wit Kangara 230 liters and plastic apparatus.
3. The Applicant was convicted on own plea of guilty and was sentenced to a fine of Ksh 10,000 = in default to serve 30 days imprisonment in Count 1, in Count 2 fined 100,000 = in default to serve 60 days imprisonment on 3rd November 2025.
4. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.



5. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

This is a sentence review report is in respect of Reuben Kimutai Ngetich who is serving 60 days imprisonment for alcoholic drinks related offences. In preparing the report, we perused relevant court file, interviewed the inmate currently held at Eldoret GK Prison, prison authority, his family members and area administrators.

Current family and personal history Family Background.

The inmate is son to Joseph Bor and Pauline Sarah Bor both who are alive and residents of Sosiot village in Ziwa-Machine location in Soy Subcounty. He is the third born in a family of eight (8) siblings including: Seli Chepkosgei, married in Nandi; Mark Kiplagat of Ziwa; Isaac Kiprof of Ziwa; Shadrack Kibet of Ziwa; Selina Chematyang who works in Nairobi; Caroline Cheron, a form 3 student and stephen Kipleting. His family resides on 3 acre of ancestral land. His parents practice subsistence maize farming. He was said to hail from a highly cohesive family whose members enjoy cordial relationship. Before his arraignment, none of his family members had interacted with criminal justice system. He seems to enjoy strong family ties as demonstrated by his family members who vouched for his release early release. His siblings when contacted regretted that he had to end up in prison for alcohol related offence. They promised to assist him venture into alternative business.

Personal history

Reuben stated that he was born in 1981 at Ziwa in Soy Sub county. He has incomplete Secondary school level of education having attended school up to class 6 and dropped out due to alleged lack of school fees. He assisted his parents in farm work and domestic chores and on attaining majority age, he was engage in casual jobs for income. Prior to his arrest, he was into vegetable and maize farming. He had initiated chang'aa business hoping to supplement his income.

He is married to Betty Ng'etich with whom they have 5 children namely: Brian Kemboi- a student at KMTTC Thika Campus; Allan Kiptoo a Form 4 Student at Kamboyot College; Bramwel Kipboge a Grade 3 Learner; Alex Kipchirchir a grade I learner and Alfred Kiplimo aged 2 years. The family sits on 0.2-acre piece of land at Chebilot village, Soy Subcounty which was apportioned to him by his father. His spouse engages in casual jobs and small-scale business at the local market. Before his confinement, he was a social drinker but denies history of drug abuse.

During our interaction, he was in good health and did complain of any serious health challenges. It is our finding that this was his first conviction.

Prison assessment rehabilitation and re-integration

When contacted, Prison authorities reported that during the short time he has been in prison, the inmate has been of good behavior and submitted to prison routine. They consider him low risk who is able to reform within community structures and recommend his early release.

Offenders' attitude towards non-custodial sentence:

The inmate is receptive to community-based court sanction and he is willing to submit to community service orders for the remainder of his term. He has promised to abandon illicit brew business.



Conclusion

Your Lordship, the offender before court regrets his involvement in changaa business and is willing to abandon the same and engage in alternative income generating venture. He is a family man of a spouse and 5 dependent children majority in school at various levels of learning. Local administrators who were earlier against non-custodial measures empathized with his situation and currently feel that he should be allowed a chance back in the community. They believe that he has learnt his lesson and he is likely to engage in other legitimate income activities. His family members who have promised to be part of community interventions, are willing to aid his quest for alternative income.

The inmate is assessed as low-risk capable of benefiting from community interventions. He is willing to offer community service for the remainder of his term and submit to conditions therein.

Recommendation

My Lord, the aforementioned indicates that the inmate in the instant case is capable of benefiting from community-based court sanctions. His family members and local administrators endorsed his consideration for early release. Bearing in mind his familial responsibilities and the fact that this was his first conviction, we form an impression that the inmate is suitable for early release on Community Service Orders for the remaining period of his sentence which expires on 14 12 2025 after remission. He is willing to serve at Kaprovin Dispensary under the supervision of Nurse In-charge.

Decision

6. I have perused through the record and considered the sentence review report on record. 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.
7. Having considered the nature of the offence and noting that the applicant has served a substantial portion of his sentence, I observe that he is scheduled for statutory release on 14th December, 2025. While a non-custodial sentence may have been warranted under different circumstances, the applicant has had sufficient opportunity during his incarceration to reflect upon his actions and reform. I am satisfied that the ends of justice have been met. Accordingly, the applicant is hereby ordered to be released forthwith, unless otherwise lawfully held. He is strongly cautioned to desist from any further criminal conduct.
8. It is so ordered.

SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 26TH DAY OF NOVEMBER, 2025.

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R. NYAKUNDI
JUDGE

