Chepngetich v Republic (Criminal Revision E275 of 2025)
[2025] KEHC 17986 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 17986 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E275 OF 2025

RN NYAKUNDI, J

DECEMBER 3, 2025

BETWEEN

ESTHER CHEPNGETICH ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant was charged with being in possession of alcoholic drinks chang'aa contrary to Section 27(1) (b) as read with Section 27 (4) of *alcoholic Drinks Control Act* No. 4 of 2010. The brief facts of the particulars of the offence are that on the 30th day of April 2025 at around 1810hrs at Kaplelach area in Turbo Sub County within Uasin Gishu county you were found being in possession of alcoholic drinks to wit 20 litres of chang'aa having not been prepared in accordance with the *Alcoholic Drinks Control Act* No. 4 of 2010.

2. The Applicant was fined Ksh 18,000/= in default to serve 3 months imprisonment on 29/9/2025.

Decision

3. The Superior Courts have delved into the issue of sentencing which is one of the core functions of trial Courts within our Criminal justice system. In the Fatuma Hassan Salo v Republic [2006] eKLR Makhandia J as he then was remarked; Thus, the court should be guided by evidence and sound legal principles when it comes to the arrival of its decision. He also stated that the court should put into consideration all the relevant factors and exclude the irrelevant factors. In addition, the Court in Peter M. Kariuki v Attorney General, [2016] eKLR also made the following observations; That a Court has been granted discretion in a manner that is both judicial and reasonable – not upon caprice or personal opinion. This has been emphasized in the judgments of other cases to be useful to the appeal court when analyzing the judgment of a Lower Court.

4. The Sentencing Guidelines of 2023 provide a foundation and a reference point for Judges and Magistrates in exercising discretion. The Policy Guidelines provides for a three-step approach that is to be applied by a trial Court in individualizing specific sentences befitting specific offences.

    a. Sentencing options – The Court is meant to consider the sentencing options that are provided for by the statute where the crime falls under. This means a reference to the statute that provides for the crime in question.

    b. Custodial v non-custodial – For the statutes that provide for both custodial and non-custodial options, the guidelines give principles that are to be considered in analyzing which of these two orders would be the most appropriate.

    c. The third step is twofold, the choice that is to be considered depends on which option was made in step 3.

        i. For a non-custodial sentence, the guidelines have also provided a policy through which the Courts discretion is to be applied in choosing the most appropriate non-custodial sentence and eventually mitigation and aggravating circumstances are expected to be put into consideration

        ii. For imprisonment, the same applies, that the guidelines have provided for a policy to be used in determining how long the term of imprisonment should be after the consideration of aggravating and mitigating circumstances.

5. A proper recrafted legal framework is needed to meet the challenging task of appropriate sentencing given the disparities on the various sanctions of what one considers to be the same offence with the prescribed sentence by the Legislature.

6. Having been in this space as a legal professional involved in adjudication of cases within the scope of criminal law, I am of the view that there is an urgent need to carefully study other theories or objectives of sentencing when it comes to punishment in order to determine which ones are acceptable as justifications for punishing the various wrongdoers in specific offences. It serves no purpose to put emphasis on deterrence and abandon the rehabilitative principle or objective if it is thoughtlessly just replaced without very clear guidelines or reasons. There are those who maintain that every different punitive measure taken by the various Courts can be satisfied by a single sentencing scheme, but practically it is difficult to accomplish transformative justice on sentencing by placing emphasis on just one objective. The Courts in Kenya tend to hinge more towards deterrence of an offender than rehabilitation. The common philosophical justifications for the institutional punishments include the following:

    a. Retribution – punishment is justified merely because the offender has committed a wrong.

    b. Deterrence – punishment is justified in order to clear the offender from committing further crimes in the future and to deter other members of society in general.

    c. Rehabilitation – the offender needs to be rehabilitated so that he will behave in a socially acceptable manner.

    d. Incapacitation – justifies the incarceration of the offender for the protection of society.

    e. Condemnation – the infliction of punishment upon the guilty person is the symbolic condemnation by society of the individual.

7. It should be borne in mind that the law makes it explicit that the discretion open to the trial courts to impose an appropriate sentence should not be interfered with whim, caprice or carte blanche. It must be acknowledged that the trial court is most familiar with the facts and circumstances of the case. These are the predominant principles in the Benard Kimani Gacheru vs. Republic [2002] eKLR:

> " 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, that 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 feels that the sentence is heavy and that 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."

8. In order for the appellate or review court to create proportionality review on sentence it must have some textual basis for doing so by looking in-depth of the applicable penal law and the principles by Superior Courts in various dicta.

9. It must not be forgotten that the Maximum Prisons facilities in Kenya were designed to hold fewer people than they do at the moment. Apparently, the correctional facilities do not have adequate infrastructure to hold the additional population of inmates hence there is an urgent need to revisit the issue of sentencing regime in Kenya to avoid a catastrophe so that petty offenders should be a subject of non-custodial sentences. It is trite that under the rehabilitative theory judicial discretion has been quite abroad, based on the idea that the punishment should fit the criminal and not the crime. Sentencing should be "individualized" depending upon such factors as the particular circumstances of the crime, the prisoner's previous criminal record, and the chances that another crime will be committed. Consequently, the Judge or Magistrate must have a great deal of discretion in order to treat offenders on a more individual basis.

10. The trial court record has been availed before me for review of sentence under Section 362 as read with 364 of the CPC and conjunctively so with Article 50 (2) (p) (q) and Sub Section 6(a) & (b) of *the Constitution* only to be disappointed that using the objective standards the subject matter or cause of action was compromised by dint of completion of sentence by the convicts. There is nothing capable on the nature of review. The application is lost.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3RD DAY OF DECEMBER, 2025

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R. NYAKUNDI

JUDGE