

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E342 OF 2025

ABEDNEGO KEMEI MAIYO
APPLICANT

=VERSUS=

REPUBLIC
RESPONDENT

Coram: Hon. Justice R. Nyakundi

MS Sidi for State

RULING

1. The Applicant was charged with selling alcoholic drinks without a licence contrary to section 8(1) (b) as read with Section 64 of Uasin Gishu County Alcoholic Drinks Act of 2014. The brief facts of the particulars are that on the 9th day of October 2025 at around 1330hrs at Shirika Village Kuinet Location in Soy Sub County, within Uasin Gishu County was found selling chang'aa to with ten (10) litres without a licence.
2. Count II: manufacturing alcoholic drinks without a licence contrary to Section 7(1) (a) as read with Section 62 of Uasin Gishu County Alcoholic Drinks Control Act of 2014. The facts are that on 9th day of October 2025 at around 1330hrs at Shirika village, Kuinet Location, in Soy Sub-County within Uasin Gishu County was found manufacturing changaa using the following apparatus; 20 litres of Kangara and a fifty-litre plastic (empty) container without a licence.
3. The Applicant pleaded guilty and was fined Ksh 10,000/= in default to serve 3 months' imprisonment. In Count II was fined Ksh 100,000 in default to serve 18 months' imprisonment on 13th October 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:

A. **INTRODUCTION AND SOURCES OF INFORMATION**

This is a sentence review report concerning Abedinego Kemei Maiyo who was sentenced to eighteen months in prison for the offence of Selling Alcoholic drinks without license C/S to section 8(1) ARW Sec 64 of Uasin Gishu County Alcoholic Control Act 2014. 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 second-born in a family of seven children, born to William Kimaiyo and Lilian Cherotich. His siblings include Eliud Kipchirchir, who works as a conductor, Vivian Cherop a house help, Crolyne Chemutai who is a student at Ziwa Technical, Abraham Kipkemboi a grade nine pupil, Stella Chepkemboi a grade six pupil Ruth Chepkoech a grade three pupil and Meshack Kiplagat who is in pre-primary. The inmate is married to Mercy Jemutai and the union is blessed with a one-year-old child. He was a casual laborer prior to his arrest. The inmate enjoys good health with no history of drug and substance abuse. The family comes from a low socio-economic background. They have expressed their willingness to support the inmate and have requested that he be considered for a non-custodial sentence.

C. **PRISON REHABILITATION**

While in custody, the inmate has been actively involved in the prison activities working in the farm. 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 has expressed regret for his actions. He recognizes that being imprisoned has had a significant impact on him and that he has learned the importance of engaging in legal business activities.

E. CONCLUSION

Your Lordship, in light of the inmate's relatively young age, the progress made toward serving his custodial sentence, and his clear expression of remorse, there is a strong indication of his 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 Probation Orders for the remaining period of 11 months.

6. The Post-Conviction Sentence Report is moderate along the categories of restorative justice than retributive or deterrent objectives of sentencing. It is often said that restorative justice is a way of seeing a crime as entrenched in building relationships and transforming the offender to be a law-abiding citizen.

7. 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.*
8. 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.

9. 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.

10. This Court has taken the liberty to review the primary record in line with Section 362 of the CPC and Article 165 (6) (7) of the Constitution to establish whether the proceedings are capable of being impeached. In my considered view, I have also weighed in equal measure the Probation Officer's Report dated 26th November 2025 which in its content and text recommended the Applicant/convict to be a suitable candidate to be removed from custody wards to home-based rehabilitation. I therefore exercise discretion to review the custodial sentence and have it substituted with a non-custodial period of eleven (11) months under the supervision of the Director of Probation and After Care Services. There shall be therefore quarterly reports to the Deputy Registrar of the High Court that the sentence is being complied with without any default on the part of the Applicant/convict.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 1ST DAY OF
DECEMBER, 2025**

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**R. NYAKUNDI
JUDGE**