



REPUBLIC OF KENYA



**Wepukhulu v Republic (Criminal Revision E023 of 2025)
[2025] KEHC 12170 (KLR) (26 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12170 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL REVISION E023 OF 2025
MS SHARIFF, J
AUGUST 26, 2025
IN THE MATTER OF THE OATH AND STATUTORY
DECLARATION ACT CAP 15 LAWS OF KENYA**

BETWEEN

MEBO WEPUKHULU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

A. Background

1. The Applicant Mebo Wepukhulu was charged with the offence of dealing with alcoholic drinks without a license contrary to Section 7(1)(b) as read with Section 62 of Penal Code, in Sirisia PMC Cr. Case No. E219 of 2025. On 29.5.2025 she was convicted and sentenced to pay a fine of Kshs.45,000/- or in default to serve 5 months custodial term.

B. Application

2. The Applicant as now moved this court craving for hearing of her application during the High Court Summer Vacation. She craves for orders that this court do review her sentence and release her forthwith for reasons that she is extremely ill and admitted at Bungoma County Referral Hospital wherein she is under oxygen supply.
3. This application is supported by an Affidavit of the Applicant and one sworn by Arfon Ali (SP) Officer in charge Bungoma Women Prison.
4. The Officer in Charge of Bungoma Women Prison has deposed that the Applicant was admitted at Bungoma County Referral Hospital on 19.8.2025 in ward No. 5 as inpatient No. 08002. Further that the Applicant has 18 days to complete her sentence. A letter dated 22.8.2025 from the Medical



Superintendent Bungoma County Referral Hospital has been attached which discloses that the applicant has been diagnosed with congestive heart failure, pulmonary edema and severe pneumonia and is indeed admitted at the hospital.

C. Analysis and Determination

5. I have considered that the Application herein, the Affidavits sworn by the Applicant and Arfon Ali (SP) the Officer in Charge Bungoma Women Prison and I have established that the Applicant is critically ill. Due to the serious health issues that are be deviling he Applicant presently, it is factual that the prison environment is not able to cater for both her medical and dietary needs. The Applicant cannot practically continue to serve her sentence given her current admission in Bungoma County Referral Hospital. Any further incarceration of the applicant would subject her to cruel, inhumane and degrading treatment, and the state would then be infringing on the applicant's fundamental right not to be subjected to such treatment (refer to article 29(f) of *the Constitution* of Kenya 2010. This court takes cognizance of the fact that the rights of an individual as enshrined in the Bill of rights are inalienable and are qualified only by such instances as the lawfully incarceration of the applicant in this case.
6. The applicant has so far served a substantial part of her jail term and is literally on home stretch, wherefore the sentencing objectives of retribution, denunciation and deterrence have been achieved.

D. Conclusion

7. Premised on the foregoing reasons and in exercise of the inherent jurisdiction of this court to enforce and promote human rights and specifically the applicant's right to preservation of her dignity as envisaged under article 28 of *the Constitution* of Kenya 2010, and the revisional jurisdiction as outlined in article 165(6) and (7) of the said Constitution, Section 364(1) (b) of the Criminal Procedure Code Chapter 75 Laws of Kenya and the provisions of paragraph 3.3.5 of Sentencing Policy and Guidelines 2023, I am inclined to allow this application and I thus make the following orders:-
 - i. The Applicant's remaining custodial term be and is hereby suspended
 - ii. The Applicant is thus set free forthwith, unless otherwise lawfully held
 - iii. This file is hereby marked as closed.

It is hereby so ordered.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 26TH DAY OF AUGUST 2025.

M.S. SHARIFF

JUDGE

In the presence of:

Applicant- Absent (Admitted at Bungoma County Referral hospital)

Ms. Matere for the Respondent

Peter Machoni - Court Assistant

