



REPUBLIC OF KENYA



KENYA LAW
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**Amukora v Republic (Criminal Revision E172 of 2025)
[2025] KEHC 11792 (KLR) (6 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E172 OF 2025
RN NYAKUNDI, J
AUGUST 6, 2025**

BETWEEN

GRACE AMUKORA APPLICANT

AND

REPUBLIC RESPONDENT

(Being a review from the judgement delivered by Hon. R. Otieno (RM) on 9th June 2025)

RULING

1. The applicant herein was charged with the offence of being in possession of alcoholic drinks *chang'aa*. The brief facts were that on the 4th day of June 2025, at Lorien Area in Kesses sub county within Uasin Gishu county, the Applicant was found being in possession of alcoholic drinks to wit 10 litres of *chang'aa* and *kangara* to wit 20 litres having not been prepared in accordance with the [Alcoholic Drinks Control Act](#) No. 4 of 2010.
2. She pleaded guilty to the offence, was convicted and sentenced to a fine of Kshs. 15,000 in default three months' imprisonment. She has now applied for her sentence to be reviewed and the remainder of the sentence of 2 months Koiluget primary school.

Decision

3. This application is based on the provisions of the [Criminal Procedure Code](#) namely Section 357, 362, 364 as read with 382. The [constitution](#) also provides under Art 50 (2) (p) (q) as follows:
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.



- (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
4. The same *Constitution* in Art 50 (6) (a) (b) expressly states as follows:
- A person who is convicted of a criminal offence may petition the High Court for a new trial if-
- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - b. new and compelling evidence has become available.
5. This application is based on the social inquiry report dated 22nd July 2025 carried out by the Probation Officer which contextualized the issues as follows: Sources of information prison records, inmate families, community and the complainant
- Current Home and Personal Circumstances
- The inmate before court is the daughter of John Shamola and Margaret Kharuma. She is the second born in a family of five children. She is married to Henry Sindani and are blessed with four children. She was engaged in casual jobs prior to her arrest. While in prison, her husband and her siblings have been visiting her. She enjoys a good relationship with her family and they are willing to welcome her back in the community.
- Prison Assessment, Rehabilitation and Reintegration
- While in prison, she has gone through counseling and has recommitted her life to God. She owns up to the offence committed and is remorseful.
- Offender's Attitude Towards Non-custodial
- The inmate is willing to complete her sentence on non-custodial measures
- Recommendation
- Your lordship, the inmate before court is a wife and a mother of four children. She owns up to the offence committed which was because of tough economy. She is remorseful and promises to venture into legal sources of income generating activity upon release. She has a supportive family that is willing to liaise with our office in the rehabilitation and supervision of the inmate in the community.
- Considering the above, I recommend that she be placed on community service order at Koiluget primary school for the remaining period of her sentence, 2 months.
6. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The *Sentence Policy Guidelines of the Judiciary 2023* provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



- c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
7. In a documented research by [Chrispinus Adenya Aben titled; Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011](#) he made the following observations: First and foremost, prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
 8. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (*Killinger GG and Cromwell P.F, 1990*). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (*Subbrano VCG. 1993*). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (*Johnson R, 2003*).
 9. Rule 8.2 of the Tokyo Rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and laxed supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
 10. The [Community Service Orders Act](#) makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
 11. The time has come to re-conceptualize the effectiveness of custodial sentencing with the aim of promoting a clearer, fairer, more uniform, and consistent approach across all levels of the Judiciary. Any



review of a sentence must remain anchored in the core objectives of sentencing. I am of the considered view that an effective sentence must not only reflect proportionality but must also communicate to society that justice has been served, and that the offender has been held accountable and denounced for their conduct. Having been involved in the adjudication of criminal matters over time, I have found no probative evidence to support the notion that harsher, more punitive, or severe sentences necessarily yield greater marginal deterrent effects.

12. In the instance case, I am hopeful that the review of custodial sentence and substitution of it with that of community service at Koiluget primary school will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by Probation Officer is that of 2 months being the balance of the custodial sentence. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 6TH AUGUST 2025

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R. NYAKUNDI

JUDGE

Representation:

M/s Sidi for the State

