



REPUBLIC OF KENYA



**Cheruiyot v Republic (Criminal Revision E161 of 2025)
[2025] KEHC 11856 (KLR) (5 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E161 OF 2025
RN NYAKUNDI, J
AUGUST 5, 2025**

BETWEEN

BENJAMIN KIMELI CHERUIYOT APPLICANT

AND

REPUBLIC RESPONDENT

(Being a revision from the judgement delivered by Hon. K. Odiambo SRM on 19th May 2025)

RULING

1. The applicant herein was charged with the offence of being in possession of alcoholic drinks without license. The brief facts were that the Applicant on the 17th day of May 2025, at around 2210hrs at Chelelek village in Ainabkoi sub county within Uasin Gishu county was found manufacturing chang'aa to wit 10 litres using 40 litres of kangara and homemade sufuria without license.
2. He pleaded guilty to the offence convicted and sentenced to fine of 30,000 in default 6 months' imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 4 months' at Ainabkoi Police station.

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 31st 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

Benjamin Kimeli Cheruiyot is from Ainabkoi Sub-County, Uasin Gishu County a village called Olare. He is a father of Six Children Four of whom are school going. The other two are adults leading their own lives independently. He was brewing and selling chang'aa to educate his children. Since his arrest and subsequent imprisonment, his wife, Sarah Kiptarus, has been taking care of the Family. The family is looking forward to his release and looking forward to the day he will be released. The Children especially his daughter who was to be married has paused the event to await his release from Prison.

Prison Assessment, Rehabilitation, And Re-integration

Benjamin Kimeli Cheruiyot has been a good person in Prison, there has never been any disciplinary case against him since his committal. He has been involved mainly in working at the Prison Farm and general cleaning at the Prison.

The skills he has learnt there will help him change his line of work and be able to earn income to support his family. The offender's family is ready to receive him and help him pick up from where he left. The children especially are looking forward to his release because they have missed him a lot. The offender has a permanent place of staying at Olare Village.

Offender's Attitude Towards Non-custodial Measures

The offender is very positive about non-custodial measures; he has said it is a chance to be living with his family while serving his sentence at the same time. He is therefore ready to abide by the terms of the non-custodial sentence.

Recommendations

I therefore recommend that the offender serves the remainder of his sentence which is 4 Months by doing free community service work at Ainabkoi Police Station.

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 V.C.G. 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 lax 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. I take note that 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 present case, I am persuaded that a review of the custodial sentence and its substitution with a community service order to be served at Ainabkoi Police Station will help advance the broader policy objective of promoting non-custodial sentencing. The probation officer has recommended that the remaining sentence be served through community service for a period of four months, which corresponds to the unserved portion of the original custodial sentence. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 5TH AUGUST 2025

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R. NYAKUNDI

JUDGE

