



**Kosgei v Republic (Criminal Revision E184 of 2025)
[2025] KEHC 11642 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E184 OF 2025
RN NYAKUNDI, J
AUGUST 4, 2025**

BETWEEN

BRIAN KOSGEI APPLICANT

AND

REPUBLIC RESPONDENT

(Being a Revision from the Judgement of Hon. Kesse dated on 12.5.2025)

RULING

1. The applicant herein was charged with the offence of being in possession of alcoholic drinks contrary to section 27[1][b] as read with section 27[4] of the *Alcoholic Drinks Control Act* No. 4 of 2010. The brief facts are that Brian Kosgei on the 11th day of May 2025, at 1330hrs at Arap Mutai village, Turbo sub-county, within Uasin Gishu County, within the republic of Kenya was found being in possession of chang'aa to wit 30 litres without a liquor license.
2. He pleaded guilty to the offence, was convicted and fined kshs. 20,000 and in default 4 months' imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 2 months' at Turbo 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 Sentence Review Report dated 11th July 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

Brian Kosgei is the son of Margaret Kirui, they are residents of Turbo Sub-County within Uasin Gishu County. The family own Three Acres of Land; the offender is yet to be given his portion. The offender is married to Stella Kosgei and they have a child aged 5 years. He has no formal employment and relies on casual labor to earn money for upkeep. The offender has a very supportive family; they have been visiting him since he began his sentence in May this year. Brian is excited about review of his sentence as he has learnt that abiding by the law is the most important thing as a Citizen.

Prison Assessment, Rehabilitation And Re-integration

Brian Kosgei has been working at the Prison Farm applying top dressing fertilizer and planting vegetables. He has perfected his farming skills which he has promised to put into practice once released. Our inquiry has established that the offender has a supportive family which is ready to help him cope with life and pick up from where he left once he is released.

Offender's Attitude Towards Non-custodial Measures

The offender has learnt to appreciate freedom and the importance of abiding by the law since his sentencing. He is therefore positive about non-custodial measures.

Recommendations

I therefore recommend that the offender serves the remainder of his sentence which is 2 months by doing free community service work at Turbo 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 entitled 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].
6. 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.
9. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.



10. In the instance case, I am hopeful that the review of custodial sentence and substitution of it with that of community service at Turbo police station 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 4TH AUGUST 2025

R. NYAKUNDI

JUDGE

