



**Mukira v Republic (Criminal Revision E109 of 2024)  
[2024] KEHC 3963 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3963 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E109 OF 2024  
RN NYAKUNDI, J  
APRIL 23, 2024**

**BETWEEN**

**KENNEDY MUKIRA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of selling of alcoholic drinks without license contrary to section 8(1)(b) as read with section 64 of Uasin Gishu County *Alcoholic Drinks Control Act*, 2014.
2. The applicant pleaded guilty to the offence before Hon. Kiptoo on 3<sup>rd</sup> April, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to 6 months imprisonment.
3. The applicant has approached this court pursuant to sections 123 & 125 of the *Criminal Procedure Code* as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6)(a) &(b) of *the Constitution*.
4. The applicant seeks a sentence review. He prays that he may be allowed to serve a non-custodial sentence. The applicant argued that when sentencing, the court failed to take into cognizance the mitigation and the plight of the accused.
5. It is my considered view that mitigation ought to count in sentencing.
6. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
  - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
  - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.



- c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
  - d) ) Protection of the community: - where the offender is likely to pose a threat to the community.
  - e) Offender's responsibility to third parties: - where there are people depending on the offender.
7. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
- i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - v. Community protection: to protect the community by incapacitating the offender.
  - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
  - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - viii. Reintegration: To facilitate the re-entry of the offender into the society.
8. I have considered the charge in question and the aforementioned factors and I am of the view that the applicant herein is a perfect fit for a non-custodial sentence and he shall proceed to serve the same for the remaining period. A community service order is therefore efficient for the remaining period. He is directed to serve the same for 5 months at Langas police station. During this period, the probation officer is obligated to file monthly reports in court in ensuring compliance of the sentence and its effectiveness.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF APRIL 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

