



**Koech v Republic (Criminal Revision E268 of 2024)
[2024] KEHC 15048 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E268 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

EMMANUEL KOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the *Penal Code*. The particulars of the offence are that on 18th February, 2024 at Chepkoilel junction, Kimumu location, Moiben Sub-County within Uasin Gishu County the applicant stole a mobile phone make Nokia C22 valued at Kshs. 28,000/= the property of Benard Kimutai.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 38,270/= and in default serve 12 months' imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 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 review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court.
5. 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.
 - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. A review of the record shows circumstances that would have been a perfect fit for victim-offender mediation. I believe that the period spent in custody by the applicant has been sufficient enough to let him appreciate the gravity of the offence and he has been shaped to a better person. From the above analysis, I am of the considered opinion that the period served in custody by the applicant is sufficient when considering the objectives of sentencing in totality. The sentence is hereby reviewed to the period already served. The applicant is therefore at liberty unless and otherwise lawfully held.
7. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF NOVEMBER 2024.

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R. NYAKUNDI

JUDGE

Representantion:

Mr. Mugun for the state

