



**Ngigi v Republic (Criminal Revision E449 of 2024)  
[2024] KEHC 15052 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15052 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E449 OF 2024  
RN NYAKUNDI, J  
NOVEMBER 29, 2024**

**BETWEEN**

**STEPHEN NGIGI ..... 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 26<sup>th</sup> May, 2024 at around 1045 hours at Kisumu ndogo area, Langas estate in Kapseret Sub-county within Uasin Gishu County with others not before court stole a mobile phone of male Tecno Spark 20 valued at Kshs. 25,000/= the property of Samson Oduyo Oduya.
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. 30,000/= and in default to serve 6 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.
6. Given the Applicant's youth and demonstrable capacity for reform, I believe the interests of justice already been served through the custodial sentence he has served so far. The period remaining is not considerable as such and I share the view that in considering the objectives of sentencing in their totality, the sentence is hereby reviewed to the period already served in custody.
7. The applicant is therefore at liberty unless and otherwise lawfully held.
8. It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 29<sup>TH</sup> DAY OF NOVEMBER 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

Representation:

Mr. Mugun for the state

