



**Obura v Republic (Criminal Revision E417 of 2024)  
[2024] KEHC 15050 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15050 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E417 OF 2024  
RN NYAKUNDI, J  
NOVEMBER 29, 2024**

**BETWEEN**

**FELIX OKOTH OBURA ..... 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](#).
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to One year' imprisonment.
3. The applicant is before 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 a sentence review relying on the sentence review report on record. The report indicates that the applicant takes full responsibility of the offence and he is remorseful and willing to serve a non-custodial sentence. The probation officer recommended that the applicant serves the remainder of his sentence through a community service order at Kipkorosio primary school for the remaining three months under the supervision of the officer in charge.
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. In addition, the Community Service Orders Act makes allow the 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.
7. I have carefully gone through the record and considered the factual matrix of the case. I am of the view that there are cases such as this, victim offender mediation should be encouraged. The case involves stealing of stealing of a mobile phone worth Kshs. 24,000/= . I am of the view that the applicant should be guided and counselled through a non-custodial sentence. I believe the non-custodial sentence will go a long way in trying to achieve the objectives of sentencing.
8. Consequently, the effective measure is to have the applicant serve a community service order for a period of 3 months Kipkorosio Primary school. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The same is informed by the fact that there is need to track progress on the effectiveness of the sentence and that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

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

.....

**R. NYAKUNDI**

**JUDGE**

