



REPUBLIC OF KENYA



**Kadeli v Republic (Criminal Revision E418 of 2024)
[2024] KEHC 16397 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E418 OF 2024
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

SAMUEL KADELI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing contrary to section 268(1) as read with section 275 of the Penal Code. The particulars of the offence are that on 22nd May, 2024 at 0200hrs at Soy “A” village in Soy Sub-County Uasin Gishu County stole one circuit breaker S/No 13247 of meter No 21519527 valued at Kshs 8,000/= the property of KPLC.
2. The applicant was convicted on his own plea of guilty and sentenced to 2 year’ 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 a sentence review. He prays that he may be allowed to serve a non-custodial sentence. 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.
5. 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.
6. I share the view that considering the aforementioned factors and the objectives of sentencing in totality, the applicant ought to serve a non-custodial sentence. I believe the period he has served in custody has shaped his character. I see no reason why he should continue to serve a custodial sentence. In the end, I am inclined to direct that he serves a non-custodial sentence for the remaining period. The same shall be done under the supervision of the probation officer. It is expected that during this period the probation officer shall undertake victim offender mediation, and follow up on any other underlying issues for the applicant to stay away from any criminal activities and that any re-offending of any nature shall suspend the probation order and the court shall be at liberty to resentence the applicant to serve the full term of imprisonment.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF DECEMBER 2024.

.....

R. NYAKUNDI

JUDGE

