



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
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**Kipchirchir v Republic (Criminal Revision E431 of 2024)  
[2024] KEHC 16428 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16428 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E431 OF 2024  
RN NYAKUNDI, J  
DECEMBER 23, 2024**

**BETWEEN**

**KEVIN KIPCHIRCHIR ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mark Mugun for the state

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 8<sup>th</sup> August, 2024 at around 08:30 hours at Chepkanga centre in Moiben Sub-county, within Uasin Gishu County, stole Kshs. 10,000/= from M-pesa Account No. 0724xxxxxx property of Caroline Chebet.
2. The applicant pleaded guilty to the offence and as a consequence he was sentenced to six months' imprisonment on 26<sup>th</sup> August, 2024.
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. Having weighed the totality of circumstances and the fundamental objectives of sentencing, I am persuaded that a non-custodial sentence would be more appropriate in this case. Continued incarceration would serve neither the interests of justice nor society. Accordingly, I direct that the applicant serves a non-custodial sentence for the remaining period under the supervision of a probation officer. During this period, the probation officer shall facilitate victim-offender mediation and address any underlying issues to prevent recidivism. It is imperative to note that any reoffending during this period shall automatically terminate the probation order, whereupon this court shall exercise its discretion to resentence the applicant to serve the full term of imprisonment.

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

.....

**R. NYAKUNDI**

**JUDGE**

