



**Lugalia v Republic (Criminal Revision E411 of 2024)
[2024] KEHC 16399 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E411 OF 2024
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

AMOS LUGALIA 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 13th June, 2024 at Annex area in Kesses Sub-County within Uasin Gishu County, he stole three black 1.5 inch metallic pipes painted green and white valued at Kshs. 2,200/= the property of Moi University – Annex Campus.
2. The applicant pleaded guilty to the offence and as a consequence he was sentenced to a fine of Kshs. 60,000/= in default serve 1 year in prison.
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. After careful consideration of all relevant factors and sentencing principles, I find that a non-custodial sentence would best serve the interests of justice in this matter. The accused has already spent a substantial part of his sentence in custody for this offence, which I deem sufficient to fulfill the punitive requirements. Further imprisonment would not advance either societal interests or justice-based objectives.
7. Therefore, I order that the remainder of the sentence be served under probation supervision. I must emphasize that any breach of these conditions through reoffending will result in the immediate revocation of this probation order, at which point this court shall impose the original custodial sentence in its entirety.

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

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R. NYAKUNDI

JUDGE

