



**Adego v Republic (Criminal Revision E298 of 2023)  
[2024] KEHC 16996 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 16996 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E298 OF 2023  
RN NYAKUNDI, J  
APRIL 18, 2024**

**BETWEEN**

**TONY AMBODO ADEGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and sentenced on his own plea of guilty to 12 months imprisonment for the offence of being in possession of Government stores Contrary to section 324(2) as read with Section 36 of the Penal Code.
2. The applicant has approached this court pursuant to sections 362,364 & 365 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.
3. The applicant seeks a sentence review for reasons that he has already started serving the sentence. He states that he is a permanent and pensionable employee of the government of Kenya and he risks losing his job if the custodial sentence is stayed. He equally argues that the sentence meted upon him is harsh considering that he is a first offender with no criminal history.
4. 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.
  - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
11. The applicant in the present case insists that the sentence was not commensurate to the charge and he faults the trial court for awarding a custodial sentence, which is in contravention of the law and sentencing policy guidelines that mandate the court to first consider the option of a fine.
  12. The charge in question has been categorized as a misdemeanour under section 324(2). The punishment for misdemeanour has been set at a maximum of two years or a fine or both under section 36 of the Penal Code. It is therefore my view that the sentence was not excessive. It was well within range.
  13. The application on revision lacks merit and the same is dismissed under Section 382 of the Criminal Procedure Code.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 18<sup>TH</sup> DAY OF APRIL 2024.**

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**R. NYAKUNDI**  
**JUDGE**

