



REPUBLIC OF KENYA



**Achanda v Republic (Criminal Revision E035 of 2024)  
[2024] KEHC 3463 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E035 OF 2024  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**ROBBINSON OMUTOKO ACHANDA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mark Mugun for the state

1. The applicant was charged with the offence of cheating contrary to section 315 of the *Penal code*. The particulars of the offence are that on the 9<sup>th</sup> day of September, 2019 at Matunda Township in Likuyani Sub-county within Kakamega County by means of fraudulent tricks induced Stanley Ages to pay a sum of money, Kshs. 130,000/=.
2. The applicant pleaded not guilty to the offence and the matter proceeded to full trial and the applicant was found guilty and sentenced to pay a fine of Kshs. 100,000/= in default 2 years imprisonment.
3. The applicant has approached this court seeking a sentence review based on the probation report filed on 26<sup>th</sup> March, 2024. According to the report, the applicant is 82 years old and that during his life he has not been engaged in any formal engagement. The report records that due to his old age, he is vulnerable and the assessment of his home environment is suitable for a non-custodial rehabilitation.
4. The prison authorities indicated that the applicant has not been involved in any rehabilitation programme in the prison. Much of the efforts have been to provide care to him owing to his advanced age. That the family is willing to have him back and assist in resettlement and integration.
5. The applicant is remorseful and takes responsibility for his offence. The report recommended that owing to his advanced age and his fragile health and vulnerability to other vices in prison, he is a perfect



fit for early release. The officer stated that his sentences can be commuted to non-custodial to serve four months' probation sentence.

6. 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.
7. 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.
8. The applicant is a senior citizen of our republic. He has shown remorse and served a substantial part of his sentence. In my considered view, the objectives of sentencing were meant to address such cases. Given that the applicant is elderly with underlying issue, I agree with the probation report that he can benefit from a non-custodial sentence.
9. This court is clothed with wide powers under article 165 (6) and (7) of the Constitution and section 362 as read with section 364 of the CPC to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
  - a. Youth of the applicant
  - b. Immaturity of the applicant
  - c. The previous good character of the applicant
  - d. Restitution of part of the stolen property to the complainant



- e. A plea of guilty entered by the applicant
  - f. Cooperation with the police by the applicant after the commission of the offence
  - g. Expression of remorse by the applicant before the trial court
10. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a probation sentence period of four months.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

