



REPUBLIC OF KENYA



**Aguvasu v Republic (Criminal Revision E052 of 2024)
[2024] KEHC 3472 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E052 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

EUGINE AGUVASU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of House breaking contrary to section 304(1) (b) and stealing contrary to section 279(b) of the *Penal code*. The particulars of the offence are that on the 1st day of march 2023 at around 11:00hrs at C.B.U village in Soy County within Uasin Gishu county, broke the window of dwelling house of Beatrice Nanjala and stole 25kg dry maize, cooking fat 2 litres ufuta, white rubber shoes Bar soap all valued at Kshs. 5,350/= the property of the of the said Beatrice Wanjala.
2. The applicant pleaded guilty to the offence before Hon. P.N. Areri on 6th March, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 4 years 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. That he should serve a non-custodial sentence. The probation officer filed a report on 25th March, 2024. The said report is to the effect that the applicant is 22 years old who has been working as a casual laborer at Soy Centre. He is not married and that he enjoys good health. The complainant equally indicated that he is not objected to his release.



5. Further facts suggest that the applicant is receptive to a non-custodial sentence and that he is remorseful. The report recommended that the applicant's home environment is favorable for his return and that he may be committed to serve 1 year and 6 months' probation order.
6. The report is responsive. 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. My considered view is that considering the aforementioned factors and the objectives of sentencing in totality, the applicant is fit for a non-custodial sentence. The strong atonement statement of forgiveness by the complainant reveals that there must have been a victim-offender mediation. 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 remainder of the sentence period of 1 year and 6 months. The same shall be done under the supervision of the probation officer.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 11TH DAY OF APRIL 2024.

.....

R. NYAKUNDI

JUDGE

