



**Amuoka v Republic (Criminal Revision E021 of 2024)  
[2024] KEHC 4327 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4327 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E021 OF 2024  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**ROJAMILLA NAMBSIA AMUOKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for revision of sentence in criminal case no.  
E105 of 2024 before hon. R. Otieno (rm) dated 11th January 2024)*

**RULING**

1. The applicant was charged, tried, convicted and sentenced to 6 months imprisonment for the offence of stealing contrary to section 268 as read with section 275 of the [Penal Code](#).
2. 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](#) and further taking into account the Probation Officer's report dated the 25<sup>th</sup> day of March 2024, the sentence so imposed by the learned trial Magistrate be and is hereby reviewed to a period of 4 months to be served on probation to enhance rehabilitation and transformation of the applicant.
3. The fact that the convict/applicant admitted the offence and that he is a first time offender are factors the learned trial Magistrate did not give much consideration to in computing the sentence. Traditionally, the Criminal Justice System in Kenya focuses on the fact that a crime is an offence against the State and not the victim. There is a presumption that in Article 157(6)&(7) of the [Constitution](#), the State steps into the shoes of the victim and prosecutes the offender. In the end, the State focuses on punishing the offender to either pay a fine to the State or commits the offender to a prison term. There is very little or no attention to the needs of the offender or the victim. Therefore, the jurisprudence



around the sentence scheme in Kenya stems from the belief that any person convicted of any offence if admitted or found guilty upon a full trial, the consequence of it is a deterrence sentence.

4. Given the facts of this case, victim-offender mediation could have been navigated by the learned trial Magistrate to take into account the best interest of the victim, the offender and the community. In my view, the present criminal justice system is unsatisfactory to many respects; first it leaves the accused and the complainant and even members of the society dissatisfied with the outcome of the criminal cases disposed off by trial court. Why do I say so? The pre-dominant doctrine guiding exercise of discretion is the deterrent principle in sentencing.
5. The Court therefore ignores the other contributory factors in sentencing policy on reparation, reformation, rehabilitation and the effective use of parity and proportionate canons which are so fundamental in our criminal justice system. It also focuses on the State than the harm against the individual or personal rights before it. I consider crime as a violation against individual rights and the State is a vehicle under Article 157 (6),(7),(9),(10) &(11) of the *Constitution* to guarantee and protect those rights by prosecuting the wrong doers as provided for in our penal system for the interest of justice. There is need for trial courts to focus on rehabilitation and re-integration of offenders into the community where such factors are responsive. This is one case where the justification for victim-offender mediation could have played a major role in having the applicant to serve a non-custodial sentence than the last resort option of a custodial sentence.
6. I am persuaded by the Probation officer's report that this a fit case for a non-custodial sentence in so far as the balance of the non-custodial sentence is concerned as imposed by the trial court. As a consequence, the sentence stands reviewed by this Court for the applicant to serve the 4 months on probation at Shiru Primary School. This being a supervisory jurisdiction imposed upon the Probation officer, periodical reports on the performance of the applicant shall be submitted to the Court after the first 2 months and at the end of the probation period for compliance with the Probation order.

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

**R. NYAKUNDI**

**JUDGE**

Representation:

Mark Mugun for the state

