



**Chanaya v Republic (Criminal Revision E023 of 2024)
[2024] KEHC 3493 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E023 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

MAXWEL CHANAYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing contrary to section 268(1) as read with section 275 of the *Penal code*. The particulars of the offence are that in the 1st day of January, 2024 at around 00:00hrs at sunset club in Maili Nne area Turbo sub-county within Uasin Gishu County stole mobile phone make Techno pop give valued at Kshs. 12,500/= the property of Zeitun Abubakar.
2. The applicant pleaded guilty to the offence before Hon. R. Otieno on 10th January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to pay a fine of Kshs. 30,000/= and in default to 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 based on the probation report filed on 26th March, 2024. The report is positive. Maxwel Chanaya is 20 years old. He is a son to single a single mother. He went to school until form four and did his K.C.S.E and was arrested before the release of his results. He has been playing football for a club in Eldoret for him to earn a living.
5. The report further indicates that the family members enjoy a cordial relationship with the applicant. He is a first-time offender and none of his siblings has records of criminal antecedents. From the interview with the prison authorities, the applicant has reformed and he is well behaved. That he can be considered for a sentence review because he is a first-time offender. We are however not told of the



- complainant's view, which I believe could have been significant so that in then end, any underlying issues could be solved in the process of re-integrating the applicant into the community.
6. The applicant has pleaded for a non-custodial sentence on grounds that he has reformed and he promises to reoffend. To this end, the probation report recommended that the applicant is suitable for community service for the remaining period of time at Township primary school.
 7. 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.
 8. 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.
 9. I am of the considered view that the aforementioned factors ought to count in such circumstances. The applicant is a first offender, he is remorseful, he pleaded guilty and he is still young man with a whole life ahead of him. The court is equally alive to the challenges that come with single parenthood especially in raising such teenagers. All these factors considered wholesomely call for a non-custodial sentence.
 10. 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

11. As stated above, from the analysis of the record, I find a non-custodial sentence to be efficient for the applicant. In adherence to the probation officer's report, he is to serve the remainder of his sentence period under Community service at Township primary with the supervision of the probation officer.

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

.....

R. NYAKUNDI

JUDGE

