



REPUBLIC OF KENYA



**Kadeli v Republic (Criminal Revision E026 of 2024)
[2024] KEHC 4316 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4316 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E026 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

SAMUEL KADELI 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 were that on the 14th day of January, 2024 at around 0500hrs at Soy police station in Soy sub-county within Uasin-Gishu County, the applicant stole one bicycle valued at Kshs. 8,000/=, the property of Soy police station.
2. The applicant pleaded guilty to the offence before Hon. P.N. Areri on 15th January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 20,000 and in default to serve 6 months 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 based on the Probation sentence report filed on 25th March, 2024. The said report records as follows:
5. That the applicant does not have any contact details of his relatives and it is clear that he comes from a family that is disintegrated. He is single. Prior to his arrest, he was engaged in casual jobs. There is no information regarding his home background. He intends to go back to soy upon release and continue engaging in casual jobs. He has taken prison sentence positively and he is ready to go out and be a responsible citizen.



6. The report recommended that considering his attitude and the period he has already served, he can perform community service at Soy health Centre for a period of 2 months.
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.
 - 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.
8. The foregoing factors are paramount and from them, I have found efficacy for community-based rehabilitation for the applicant. I find so because he is a first offender, the items were recovered, he has pleaded guilty, he has expressed remorse and he has served part of his sentence in prison, which I believe has shaped his character. In adherence to the probation officer's report, he is to perform community service at Soy Health Centre for a period of two months.

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

R. NYAKUNDI

JUDGE

