



REPUBLIC OF KENYA



**Kiplimo v Republic (Criminal Revision E090 of 2024)
[2024] KEHC 4280 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E090 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

COLLINS KIMUTAI KIPLIMO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of theft of farm produce contrary to section 8(1) of *Stock Produce Theft Act* Cap 335 Laws of Kenya. The particulars of the offence were that on 28th October, 2023 at unknown time at Tilatu village in Moiben Sub-County within Uasin Gishu County stole 10 bags of maize cobs valued at Kshs. 15,000/= the property of Cleti Kiprotich Kurgat.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 6th November, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 1 year 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 report dated 28th March, 2024. The probation officer's report indicates that the applicant is remorseful and prayed for a non-custodial sentence. However, the complainant in this matter who is his grandfather indicated that he has a problem if the inmate is granted a non-custodial sentence for reasons that he stole from him severally despite several warnings. The probation officer recommended that the applicant is not suitable for a non-custodial sentence for the remaining period of time because his rehabilitation will be difficult.
5. 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.
6. Upon perusal of the probation report, there are negative indicators for home-based rehabilitation of the applicant. He will therefore serve the remainder of the sentence in custody.

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

.....

R. NYAKUNDI

JUDGE

