



REPUBLIC OF KENYA



**Kiprotich v Republic (Criminal Revision E023 of 2024)
[2024] KEHC 3434 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3434 (KLR)

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

BETWEEN

MORGAN KIPROTICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of malicious damage to property contrary to section 339(1) of the Penal Code. The particulars of the offence are that on the 8th day of July 2023 at 1100 hours at baharini area in Turbo sub-county within Uasin Gishu county, the applicant jointly with another willfully and unlawfully damaged submersible water pump worth Kshs. 100,000/= the property of Dinah Chirchir.
2. The applicant pleaded guilty to the offence before Hon. D. Mikoyan on 25th July, 2023 and as a consequence, he was imprisoned for a term of 2 years.
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 28th March, 2024. The said report records as follows:
5. Morgan Kiprotich was born in 2002. He engages in the boda boda business to earn a living. He is single. He was positively regarded by his family and community. The local administration has no objection for his early release but hopes he has rehabilitated.



6. The report further indicated that the applicant is remorseful and has taken responsibility for his offence. It was recommended that he be considered for a non-custodial sentence and placed to serve CSO for a period of 8 months at Sikowet primary school.
7. I have considered the report and it is positive. 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 above factors act as a guideline of the considerations that guide this court in issuing a non-custodial sentence. I find appropriateness in a community-based rehabilitation for the applicant herein given the circumstances; The record indicates that the applicant is a first offender, the applicant is remorseful and he is suitable for reintegration to the community. In the end and in adherence to the probation officer's report, he is to serve 8 months under supervision by the probation officer at Sikowet primary school.

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

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R. NYAKUNDI

JUDGE

