



**Lemiso v Republic (Criminal Revision E054 of 2024)
[2024] KEHC 4285 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E054 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

SAMUEL LEMISO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of breaking into a building and committing a felony contrary to section 306(a) of the *Penal Code*. The particulars of the offence were that on the 20th day of July, 2023 at Roadblock area in Turbo Sub-County within Uasin Gishu County, the applicant jointly with others broke and entered a building workshop of Gideon Nawanikhe and committed there in a felony namely stealing, 3 steel door valued at Kshs. 14,000/=, vice machine (Jua kali made) valued at Kshs. 10,000/=, chanel stand valued at Kshs. 3,000/=, rear grill for lorry valued at Kshs. 4,000/=, square tube metal valued at Kshs. 2,000/=, all valued at Kshs. 57,000/= property of Gideon Nawanikhe.
2. The applicant pleaded guilty to the offence before Hon. R. Onkoba on 10th August, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 60,000/= in default to serve two years 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 dated 20th March, 2024. According to the report, the applicant is a 28-year-old. He is married to one wife with whom they have



- sired one child aged two years. He was earning a living from running a green grocery in Soi Market. The report revealed that the applicant does not have any criminal history.
5. The prison authorities also indicated that the applicant has reformed and that he has also received spiritual counselling and nourishment. The applicant is receptive of a non-custodial sentence. He indicated that he has reformed his character and he has learnt a lesson. From the foregoing, the report recommended that the applicant be released to serve the remaining nine months Community Service at Kidiwa primary school.
 6. 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.
 7. 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.
 8. My considered view is that the present case satisfies the above criteria for reasons that the applicant is a first offender, he is remorseful, he pleaded guilty and the applicant's home is favorable for his return. All these factors considered wholesomely, call for a non-custodial sentence. I see no reason why he should still serve a custodial sentence. The report has indicated that his home environment is favorable for his return. Additionally, I am of the view that it is a matter that could benefit from victim-offender



mediation to resolve any other underlying issues. Therefore, in adherence to the probation officer's report, he is to serve a 10 months CSO at Kidiwa primary school under supervision by the probation officer.

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

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R. NYAKUNDI

JUDGE

