



**Lutha v Republic (Criminal Revision E052 of 2023)
[2024] KEHC 3492 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3492 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E052 OF 2023
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

JOHN LUTHA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of robbery with violence contrary to section 296(2) of the penal Code but he was convicted with the offence of stealing contrary to section 275 of the Penal code Cap 63 laws of Kenya.
2. The applicant pleaded guilty to the offence and as a consequence, through a plea-bargain agreement he was convicted on his own plea of guilty and sentenced to serve 3 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 sentence review. The probation officer filed a report on 25th March, 2024. The said report is responsive. The family of the applicant are ready to receive him back home and offer him any necessary help he might need. I have considered the report and the offence in question.
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.
 - 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.
6. The factors aforementioned encourage that first offenders be considered for a non-custodial sentence. The applicant has shown the willingness to serve a non-custodial sentence. I am inclined to grant the applicant a chance to serve a non-custodial sentence. Let the applicant serve the remainder of the sentence under probation i.e. 10 months. The applicant shall be under the supervision of the Probation officer and the said officer shall in turn file monthly reports in court. In default, the custodial sentence shall revert.

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

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R. NYAKUNDI

JUDGE

