



**Marus v Republic (Criminal Revision E099 of 2024)
[2024] KEHC 3432 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3432 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E099 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

PHILEMON MARUS APPLICANT

AND

REPUBLIC RESPONDENT

RULING

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 10th day of December, 2023 at around 11:00hrs at Moiben village in Moiben Sub-County, the applicant with another not before court broke and entered the store of Paul K. Marus and did steal a half a sack of unshelled maize valued at ksh 2000/= the property of the said Paul K. Marus.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 13th December, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 12 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 report filed on 28th March, 2024. The report reveals that the prison administration approved the applicant as one who has reformed. He was assigned duties at Lumumba farm where he learned basic farming skills, but had to stop due to sickness. The report further indicates that the offender’s attitude towards the offence is positive.
5. The probation officer recommended that considering the applicant’s home environment, he is suitable for his rehabilitation and reintegration. He was recommended for a non-custodial sentence and preferably Community Service for 5 months at Kabiyet Chief’s office.



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.
7. The conclusion I draw from the above facts and in considering the offence in question is that the applicant is suitable for a non-custodial sentence. The *Community Service Orders Act* makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
8. The upshot is that the present case fits the legal framework of the Community Service Act as an alternative sentence to imprisonment. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve his sentence for 5 months at Kabiyet Chief's office.

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

.....

R. NYAKUNDI

JUDGE

