



**Matete v Republic (Criminal Revision E015 of 2023)
[2024] KEHC 4326 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4326 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E015 OF 2023
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

OSCAR ANDAWA MATETE 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 are that on the night of 16th August, 2022 at Kipkaren river Centre, Ngenyilel Location in Turbo Sub-County within Uasin Gishu County, jointly with others not before court, broke and entered into a building namely a retail shop of Nelson Simiyu and committed a felony therein namely theft of assorted shop commodities valued at Kshs. 20,000/=, the property of Nelson Simiyu.
2. The applicant pleaded guilty to the offence before Hon. R. Odenyo on 29th August, 2022 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve five 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 filed on 25th March, 2024. The said report records as follows:
5. That Oscar Matete is aged 23 years. He has no criminal history. He is single and lives with his parents in their homestead. The prison authorities indicated that the applicant has reformed. He has received spiritual counselling and nourishment. Further, he is receptive of a non-custodial sentence. He stated



- that he has learned a lesson. Given the aforementioned factors, the applicant was recommended for a non-custodial sentence i.e. a community service order of twenty months at Mbajo 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 items in question were recovered. All these factors considered wholesomely, call for a non-custodial sentence.
9. This court is clothed with wide powers under article 165 (6) and (7) of the *Constitution* and section 362 as read with section 364 of the *CPC* to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
- a. Youth of the applicant
 - b. Immaturity of the applicant



- c. The previous good character of the applicant
 - d. Restitution of part of the stolen property to the complainant
 - e. A plea of guilty entered by the applicant
 - f. Cooperation with the police by the applicant after the commission of the offence
 - g. Expression of remorse by the applicant before the trial court
10. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a community service order for Twenty months at Mbajo Primary School. In addition, the applicant will be required to keep the peace and be of good behaviour. He will appear before the supervisor as required and a daily report be filed with the probation officer. The applicant should remain within the jurisdiction of the court unless written permission to go outside the jurisdiction is obtained from the supervisor or the court. He should notify the court or the supervisor in advance of any change of name or address during the pendency of the sentence. He should abstain from owning, possessing or carrying any weapon likely used to be used as a device for house breaking to commit an offence of stealing. The Community service order requires the applicant to perform unpaid public works as prescribed in the committal warrant, which instrument shall be submitted to the probation officer on a daily basis. That any breach of these conditions will necessitate sanctions including cancellation of the community service order as an appropriate sentence.

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

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R. NYAKUNDI

JUDGE

