



REPUBLIC OF KENYA



**Mukabwa v Republic (Criminal Revision E084 of 2024)
[2024] KEHC 3426 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E084 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

WILSON MUKABWA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of preparation to commit a felony contrary to section 308(3) (a) of the *Penal code*. The particulars of the offence were that at around December, 2023 at Kapkoros village in Kamagut Location, Turbo Sub-County within Uasin Gishu County, was found having his head masked with intent to commit a felony, namely stealing.
2. The applicant pleaded guilty to the offence before Hon. C. Wattimah on 18th December, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 12 months in prison.
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 indicates that the applicant comes from a humble background. He started engaging in casual jobs at an early age. That he is a married man with two children who are of school going age.
5. The Probation report further states that the applicant has expressed willingness to serve a non-custodial sentence. He regrets his offence and is willing to cooperate in serving a non-custodial sentence as



this will also be an opportunity for him to continue fending for his family. The Probation officer recommended that he performs community service at Cheramei Dispensary for a period of six months.

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. Further to the aforementioned, 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 analysis of the facts of this case is such that it 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 at Cheramei Dispensary for a period of six months. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

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

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R. NYAKUNDI

JUDGE

