



REPUBLIC OF KENYA



**Mwangi v Republic (Criminal Revision E045 of 2024)  
[2024] KEHC 3430 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3430 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E045 OF 2024  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**BENJAMIN MWANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the Penal Code. The particulars of the offence were that on 4<sup>th</sup> September, 2022 at 0100 hours at Chepkanga village, Moiben Sub- County within Uasing Gishu County, the applicant jointly with others not before court, broke and entered the house of Susan Tanui with the intent to steal and stole from therein four home theatre speakers, pliers and a pair of shoes all valued at Kshs. 95,300/= the property of Susan Tanui.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 13<sup>th</sup> October, 2022 and as a consequence, he was convicted on his own plea of guilty and he was 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 a sentence review based on the probation report filed on 25<sup>th</sup> March, 2024. The report records the following:
5. The applicant is 42 years old. He comes from a well-knit family. He was a reliable person prior to this offence where he had made good relationship with the community. The applicant's community report indicates that he may have gotten into trouble due to working with bad associates as he is termed as a first offender and reliable person.



6. The applicant has expressed his willingness to serve a non-custodial sentence. For the aforementioned facts, the report recommended that the applicant served a one-year probation sentence.
7. 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.
8. 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.
9. I have considered the probation report for the applicant and the aforementioned factors and the conclusion I draw is that the applicant is eligible to serve a non-custodial sentence. The factors that precipitate such a sentence are that he is a first offender, he pleaded guilty, the items in question were recovered and he has expressed willingness to adhere to the conditions of a non-custodial sentence.
10. 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
11. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a year probation sentence. The same shall be done under the supervision of the Probation office.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

