



**Mwani v Republic (Criminal Revision E086 of 2024)
[2024] KEHC 3435 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E086 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

PIUS MWANI 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 are that on the night of 2nd and 3rd of September, 2023 at Mwiruti trading center Kapseret Sub-County within Uasin Gishu County, the applicant jointly with two before court and others not before court broke and entered the bar namely Mwenye bar with the intent to steal and did steal from therein assorted drinks valued at Kshs 30,000/=, the property of James Waithaka Gituro.
2. The applicant pleaded guilty to the offence before Hon. R. Otieno on 14th October, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs 30,000/= in default to serve 1 year 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. That he should serve a non-custodial sentence. The probation officer filed a report on 28th March, 2024. The Probation report indicates that the applicant is from a humble background. He is a class seven drop out. He is married and blessed with two young children. The family of the applicant has shown the willingness to receive him back upon his release.
5. Further facts suggest tat the applicant has gained artisan skills while in prison. Upon his release he intends to utilize the skill to earn a living. The applicant expressed willingness to serve a non-custodial



- sentence. He believes that this sentence will enable him better his life as well as take care of his young family.
6. The report recommended that the applicant is suitable for a non-custodial sentence at this point since he has a balance of 3 months to finish his sentence. It was therefore concluded that he can be placed on Community Service for 2 months, to be performed at Mwiruti chief's camp.
 7. The report is responsive. 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. My considered view is that considering the aforementioned factors and the objectives of sentencing in totality, the applicant ought to serve a non-custodial sentence. He has a remainder of three months and I believe the period he has served in custody has shaped his character. I see no reason why he should continue to serve a custodial sentence. In the end, I am inclined to direct that he serves a non-custodial sentence for the remainder of the sentence period of three months. The same shall be done under the supervision of the probation officer.

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

.....

R. NYAKUNDI
JUDGE

