



**Njoroge & another v Republic (Criminal Revision E051 of 2024)
[2024] KEHC 4322 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E051 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

BARNABAS NJOROGE 1ST APPLICANT

SAMWEL WANYONYI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged with the offence of stealing contrary to section 268(1) as read with section 275 of the Penal Code. The particulars of the offence were that on the 25th day of October 2023 at Huruma areas, Turbo sub-county within Usain Gishu County stole Fiber Spling machine, ODTR, Power meter, Fiber Clover and Fiber Splitters all valued at Kshs. 262,000/= the property of James Wakufula.
2. Each of the applicants pleaded guilty to the offence before Hon. Onkoba on December 11, 2023 and as a consequence, each of them was convicted on their own plea of guilty and sentenced to a fine of Kshs. 100,000/= in default, two years imprisonment.
3. The applicants have 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 applicants seek review of sentence based on the post-sentence report which captures the following:
5. That Barnabas is aged 52 years, a resident of Kapseret Sub- County who worked as a casual prior to his arrest and indictment for the offence of stealing. He is married and blessed with three children. The



offender's attitude to the offence is that he is willing and ready to pay for his deeds through community work.

6. The recommendations by the probation officer are to the effect that Barnabas is immune-depressed and on medication, he is a first offender. Prior to his arrest, he was the provider of his family. He has shown willingness to serve non-custodial sentence for the rest of the period of his sentence. The report is therefore responsive for the court to consider a non-custodial sentence.
7. As for the 2nd applicant Samwel Wanyonyi, he is aged 32 years, a resident of Kapseret, Langas location. He is not married but happens to have a child from a relationship with another lady. The applicant takes full responsibility for the offence and in this respect the probation officer recommends that he is a suitable candidate to serve on probation for the remainder of the sentence.
8. The custodial sentence be an is hereby reviewed for the applicants to serve on probation for 12 months being the balance of the custodial sentence. It is expected that during this period the probation officer shall undertake victim offender mediation, psycho-social support for the applicants to stay away from any criminal activities and that any re-offending of any nature shall occasion suspension of the probation order for the court to be at liberty to resentence the applicants to serve the full term of imprisonment.

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

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R. NYAKUNDI

JUDGE

Mark Mugun for the state

