



REPUBLIC OF KENYA



**Njoroge v Republic (Criminal Revision E054 of 2024)
[2024] KEHC 4286 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E054 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

DAVID KANYIRI NJOROGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was 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 3rd day of November, 2023 at Uasin Gishu County Government offices- Eldoret town in Turbo sub-county within Uasin Gishu County stole an HP Laptop valued at Kshs. 80,000/= the property of Uasin Gishu County government which was under the custody of Brian Kiplagat.
2. The applicant pleaded guilty to the offence before Hon. C. Wattimah on 14th December, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve two 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 dated 1st April, 2024 and filed on 5th April, 2024. The said report records as follows:
5. That David Njoroge is aged 23 years, a resident of Wareng Sub- County, a las born child among eight children born to Paul Njoroge who is a broker in Eldoret and Beth Wanja who is a farmer. The applicant at the time of arrest was working as a boda boda operator. He is a married man blessed with one child. The offender’s attitude to the offence is that he has learnt his lesson and he promises not to reoffend.



6. The Probation officer recommends that given the inmate home environment is suitable for his rehabilitation and reintegration, he can serve probation sentence for a period 11 months for him to receive guidance and counselling to avoid reoffending.
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.
 - 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.
8. As stated above, from the meta-analysis, I have found efficacy for community-based rehabilitation for the applicant. The only condition precedent for this individual applicant is to retribute the loss incurred by the complainant. Given that he admitted this offence but failed to explain the whereabouts of the laptop, that therefore tends to focus more for the applicant to find ways and means as boda boda operator during the period he is serving non-custodial sentence to channel some resources to the victim to mitigate the loss. In adherence to the probation officer's report, he is to serve 11 months under supervision by the probation officer.

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

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R. NYAKUNDI
JUDGE

