



**Odhiambo v Republic (Criminal Revision E039 of 2024)
[2024] KEHC 3464 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E039 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

GEORGE ODHIAMBO 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 are that on diverse dates between 21/05.2023 and 22/05/2023 at Kampi teso estate in Soy sub-county within Uasin Gishu County, the applicant stole 34 pieces of iron sheets (super mabati) valued at Kshs. 63,252, the property of Samuel Ng'ang'a Mwangi.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to pay a fine of Kshs. 30,000/= and in default 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 filed on 25th March, 2024. The report is responsive and recommends him for a probation sentence.
5. 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.
6. Considering all these factors in totality, the offence in question is one that could best be addressed through a non-custodial sentence. The applicant is willing to serve the remainder of the sentence. The prison authorities indicated that he is fit for release. I couldn't agree more. I direct that he serves a probation sentence for the remaining period of 8 months. Monthly reports shall be filed in court in ensuring compliance.

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

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R. NYAKUNDI

JUDGE

