



**Simiyu v Republic (Criminal Revision E096 of 2024)
[2024] KEHC 4276 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E096 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

EDGAR SIMIYU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of housebreaking contrary to section 304 (1)(b) and stealing contrary to section 279(b) of the Penal Code. The particulars of the offence are that on the 23rd day of October, 2023 at Tuigoin area Ngenyilel location in Turbo Sub-County within Uasin Gishu county broke and entered a dwelling house of Patience Nduti Kutu and stole one Tv set branded Solar Panda ‘24’ and a Mini portable electronic scale all valued at Kshs. 22,000/=, the property of the said Patience Nduti Kutu.
2. The applicant pleaded guilty to the offence before Hon. R. Odenyo on 24th October, 2023 and as a consequence, he was fined Kshs. 30,000/= and in default 12 months 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 28th March, 2024. The said report records as follows:
5. That Edgar Simiyu comes from a well-knit family. He has been in touch with his family who have been encouraging him. He is single. Prior to his arrest he was engaging in casual jobs. His family have shown readiness and willingness to receive him back home and assist him in settling.



6. 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.
7. Having stated the above factors, I find appropriateness in a community-based rehabilitation for the applicant. The record indicates that the items were recovered, the applicant is a first offender, the applicant is remorseful and he is not a threat to the community. In the end and in adherence to the probation officer's report, he is to serve 4 months under supervision by the probation officer at Sirende dispensary.

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

R. NYAKUNDI

JUDGE

