



REPUBLIC OF KENYA



**Thio'ngo v Republic (Criminal Revision E059 of 2024)
[2024] KEHC 3490 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E059 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

EDWARD THIO'NGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the penal code. The particulars of the offence are that on 16th November, 2022 at around 0800hrs at Kipkaren estate in Langas Pioneer location of Kapseret sub-county within Uasin Gishu County, stole a motor cycle reg No, KMFC 234R TVS, blue in color valued at Kshs. 167,000/=, the property of Hezbon Onyancha.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to serve three 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 applicant is suitable to serve a non-custodial sentence. He is receptive to a non-custodial sentence. The prison authorities indicated that he has reformed. I am of the opinion that if the applicant is fit for reintegration back to the community, I should not hold him back. Let him go out and benefit from a probation sentence. I direct that he serves a probation sentence for the remaining period of 13 months. Monthly reports shall be filed in court by the probation officer in ensuring compliance.

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

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R. NYAKUNDI

JUDGE

