



**Wafula v Republic (Criminal Revision E042 of 2024)  
[2024] KEHC 4320 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4320 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E042 OF 2024  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**LEWIS NYONGESA WAFULA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of Breaking into a building and committing a felony contrary to section 306(a) of the Penal Code. The particulars of the offence are that on 15<sup>th</sup> June, 2023 at 1600hrs at Umoja, Rehema area in Kesses sub-county, within Uasin Gishu County, the applicant broke and entered into a shop of Rhoda Chelagat and committed therein a felony namely stealing and did steal there in 5 packets of 2kgs Pembe wheat flour, 20 packets of 1/4Kgs sugar, 10 packets of 1/2kgs sugar, 5 pieces of 50ml Armis petroleum jelly, 5 pieces of Zenta bar soap, 12 packets of 200ml UHT milk, 6 packets of 500ml UHT milk, 2 loafs of 400gms of bread, 2 loafs of 200gms of bread, 36 pieces of doughnuts, 20 pieces of soft, 12 pieces of mavin cakes, assorted biscuits, 1 padlock, 5 padlock keys on a chain all valued at Kshs. 6,725/= and cash money Kshs. 1,500/= the property of Rhodah Chelagat.
2. The applicant pleaded guilty to the offence before Hon. C. Wattimah, on 17<sup>th</sup> August, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 20,000 and in default to serve 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 25<sup>th</sup> March, 2024. According to the report, the applicant is a resident of Kapseret sub-county in Uasin Gishu County where the family owns 0.5 acres of Land. He is a class seven dropout and has been casual jobs for a living. He is a husband and father of one. He has been contacting with his family and they are willing to welcome him back home. He is willing to serve a non-custodial sentence.
5. It is for the said reasons that the probation officer recommended that the applicant be place on Community service orders at rehema primary school for a period of 20 days.
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. Considering all these factors in totality, the offence in question is one that could best be addressed through a non-custodial sentence. The applicant has served a substantial part of his sentence and there is no need to hold him any further. He is a first offender, the items were recovered, he has expressed remorse and the custodial sentence has shaped his character. It is for these reasons that I find efficacy for community-based rehabilitation for the applicant. In adherence to the probation officer's report, he is to perform community service at Rehema primary school for a period of 20 days.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

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**R. NYAKUNDI**  
**JUDGE**

