



**Wafula v Republic (Criminal Revision E369 of 2023)  
[2024] KEHC 4324 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4324 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E369 OF 2023  
RN NYAKUNDI, J  
APRIL 11, 2024**

**BETWEEN**

**DENNIS WANJALA WAFULA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Coram: Before Justice R. Nyakundi

Mark Mugun for the state

1. The applicant was charged with the offence of stealing contrary to section 278(a) of the *Penal Code*. The particulars of the offence are that on 13<sup>th</sup> November, 2022 at about 12:30 hours at Kipsomba area Soy Sub-County within Uasin Gishu County, the applicant stole a motorcycle reg No KMFN 330A TVS, the property of Geoffrey Owino worth Kshs 90,000/=
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 25<sup>th</sup> 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 has been reported to be of good character. He is receptive to the non-custodial sentence for the remainder of his sentence. I believe a non-custodial sentence would be favorable in the circumstances. I direct that he serves a probation sentence for the remaining period of 7 months. Monthly reports shall be filed by the probation officer in court in ensuring compliance.

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

.....

**R. NYAKUNDI**

**JUDGE**

