



**Adaan v Republic (Criminal Revision E072 of 2024)
[2024] KEHC 5668 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5668 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E072 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

WILSON ADAAN APPLICANT

AND

REPUBLIC RESPONDENT

*(Being Review on Sentence from the Decision in Cr.
Case No. E364 of 2022 by N.M Idagwa on 1.9.2022)*

RULING

1. The applicant was charged with the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the *Penal Code*. He also faces an alternative charge of handling stolen goods contrary to section 322(1)(2) of the *Penal Code*.
2. The applicant pleaded guilty to the offence and was convicted on his own plea of guilty. As a consequence, he was sentenced to a fine of Kshs. 35,000/= in default serve four 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 sentence review report on record. The report is responsive. It is reported that the applicant has been participating in spiritual gatherings and this has really helped him realize the importance of being with good company. It was further stated that the applicant has been participating in industry and he has been shaving the inmates. He is remorseful, ready, and willing to serve the non-custodial measures if given a chance by the court. The probation officer recommended that the applicant is suitable for probation.



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.

Turning to the issue of sentence the court wants to remind itself and the Lower Court that sentencing should always follow the provisions of the statute, the Sentencing policy guidelines published in 2023 and the Principles laid down in the various case law. It is trite that the basis on which Appeal's Court exercise jurisdiction to review or overturn the sentence is basically on factors of the sentence being manifestly excessive or in adequate likely to send shock waves to the public and the offender. *The constitution* 2010 also enacted Article 25 (a) dealing with rights and fundamental freedoms guarantees of citizens from torture and cruel, inhuman, or degrading treatment or punishment. That fundamental right should be borne in mind in sentencing an offender upon conviction for that particular offence. In some also as a matter of principle in sentencing any verdict, sanction or punishment must be proportionate to the crime for which the accused person has been convicted. It is also clear from the objectives and principles of sentencing, that the accused being a first offender or has entered a plea of guilty to the offence should count for something to reduce his or her sentence. Generally, for first offenders, it is very unlikely that if they are placed on non-custodial sentence they would be re-offending hence impacting negatively public law and order in our communities. The trial courts ought to focus more on rehabilitation of offenders than deterrence with lengthy sentences that may not aid in the transformation of the offender. There are various sentencing provided in our penal system which are rarely invoked as measures to punish crime by the trial courts. The non-custodial measures are fashioned around the Tokio rules 8.1 & 8.2 (a-m) which provide inter-alia Verbal sanctions, such as admonition, reprimand and warning Conditional discharge Status Penalties Economic sanction and donetary penalties, such as fines and day-fines Confiscation or an expropriation order Restitution to the victim or a compensation order Suspended or differed sentence Probation and judicial supervision A community service order Referral to an attendance center House arrest Any other mode of non-institutional treatment, or Some combination of these measures.

Just as the offender's person need and interests have to be weighed against society's interest at the pre-trial stage, so the offenders "rehabilitative needs" at the sentencing stage must be balanced against eh need to protect society and "the interests of the victim the list of non-custodial measures in Rule 8.2 while not exhaustive, contains a wide range of non-custodial measures to suit different circumstances and achieve different objectives



6. The analysis of the facts of the instant case warrants a non-custodial sentence. The applicant has since been in custody close to two years, which period I believe has shaped his character. He is one person who in my view will benefit from a non-custodial sentence. He is a young person with a whole life ahead of him.

From the foregoing and in considering the probation report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. The applicant is therefore placed on probation for the remainder of his sentence. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 17TH DAY OF MAY 2024.

In the Presence

Mr. Jonathan K. Bungei for the State

Appellant

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R. NYAKUNDI

JUDGE

