



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bila v Republic (Criminal Revision E097 of 2024)  
[2024] KEHC 5240 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E097 OF 2024**

**RN NYAKUNDI, J**

**MAY 17, 2024**

**BETWEEN**

**CHRIS BILA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of shop breaking and committing a felony contrary to section 306(a) of the [Penal Code](#).
2. The applicant pleaded not guilty to the offence, the matter went through a full trial, he was found guilty of the offence and sentenced to 5 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 not responsive. It is reported that he was placed on probation but did not abide by the orders as required. He had previously committed such offences of which he pleads for leniency and blames his peers whom he prays to dissociate with if given a second chance. Those who know him in the community, claim that there is need to deter him since he is a repeat offender.
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.
6. Further to the aforementioned, the *Community Service Orders Act* makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
7. The facts and report in the instant case are not positive to warrant a non-custodial sentence. The applicant is reported to be a repeat offender and therefore a non-custodial sentence would not achieve the purpose of rehabilitation. The applicant has since served ten months out of the 5 years sentence. I am of the considered view that he is not suitable for a non-custodial sentence at this stage. The same would be considered at a later stage. He is still a young person who needs proper rehabilitation before he can be reintegrated back to the community. For this reason, let him serve the sentence in custody with a provision that the last 6 months of his sentence be served on probation.

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

**R. NYAKUNDI**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

**In the Presence of**

Mr. Jonathan K. Bungei for the State.

Appellant

