



**Edonga v Republic (Criminal Revision E052 of 2024)
[2024] KEHC 5222 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E052 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

EMANIKOR EDONGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram:

Mr Jonathan K Bungei 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*.
2. The applicant pleaded guilty to the offence before Hon. D. Orimba on 21st July, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to 2 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. According to the report, the applicant has appreciated the importance of being a law-abiding citizen. He is remorseful, ready and willing to serve the non-custodial measures if given a chance by this court. The probation officer recommends him for a community service Order at Kalokol mixed primary school.
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.

With regard with this case, it appears that there was more emphasis on deterrence than rehabilitation. The applicant in this case had no previous convictions. He pleaded guilty to the charge which could have contributed to a reduction of sentence. The circumstances in which the crime was committed is undoubtedly such as to render it necessary such as to render to impose a non- custodial sentence. The Fact that the Applicant is relatively young and that she is remorseful is a factor which is favourable to the Applicant that appropriately releasing her to the home based rehabilitation would not be prejudicial to society.

- 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. Having gone through the facts of the present case and particularly the charge in question, the circumstances fit the legal framework of the [Community Service Act](#) as an alternative sentence to imprisonment. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence i.e. 14 months at Kalokol Mized Primary School. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

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

In the Presence of:-

Mr. Bungei for the State

Appellant

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R. NYAKUNDI

JUDGE

