



REPUBLIC OF KENYA



**Ekai & another v Republic (Criminal Revision E054 of 2024)  
[2024] KEHC 5674 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5674 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E054 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**PETER EKAI ..... 1<sup>ST</sup> APPLICANT**

**KELVIN LOMOKOL ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being Review on Sentence from the Decision in Cr. Case  
No. 320 of 2023 by T.K Rono (Resident Magistrate))*

**RULING**

**Representation:**

Mr. Bungei K.Jonathan for the state

1. The applicants were charged with the offence of shop breaking and stealing contrary to section 306 (a) of the *Penal Code*. The equally faced an alternative charge of handling stolen property contrary to section 322(1)(2) of the *Penal Code*.
2. The applicant pleaded guilty to the offence before Hon. I.K. Rono on 23<sup>rd</sup> August, 2023 and as a consequence, they were convicted on their own plea of guilty and sentenced to 3 years imprisonment. The court in sentencing the applicants considered the option of a non-custodial sentence but declined to adopt it for reasons that the environment would be hostile for them.
3. The applicants have 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 applicants seek sentence review based on the sentence review reports on record. The reports are responsive. For the 1<sup>st</sup> applicant, it is reported that he is 32 years old, with a family who depend on him. The prison authorities indicated that he has been well behaved with no disciplinary charges pressed against him. That he has been guided and counselled accordingly. The 1<sup>st</sup> applicant on his part prayed for leniency and promised to be well behaved if he is released back to the community. The probation officer recommended a that he be placed on Community service work at Katilu Ass. Chief's office. The report for the 2<sup>nd</sup> applicant is not any different. He is 21 years old and he is remorseful. The prison authorities reported that he has changed and has a lot of discipline. He was recommended for a CSO at the chief's office Nanam ward Lokichogio.
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, 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 applicants serve the remainder of the sentence at their respective stations. Monthly reports shall be filed in court by the supervisors of the applicants through the probation officer. The essence of it is 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 17<sup>TH</sup> DAY OF MAY 2024.**

In the Presence of

Mr. Bungei K Jonathan for the State

Appellant



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**R. NYAKUNDI**

**JUDGE**

