



**Ekal v Republic (Criminal Revision E091 of 2024)  
[2024] KEHC 5236 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5236 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E091 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**VINCENT ATOL EKAL ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of breaking into a building and committing a felony contrary to section 306(a) of the Penal Code.
2. The applicant pleaded guilty and was convicted on his own plea of guilty. As a consequence, he sentenced to 4 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 on record. It is reported that the applicant has been participating in spiritual gatherings and this has really helped him realize the importance of being in good company. While in prison he has acquired skills that will enable him resettle back to the community. His mother is ready and willing to welcome him and help him resettle back to the community. The applicant is remorseful and prays that the court may be lenient. The probation officer recommended that the applicant be placed on 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.
6. The analysis of the facts in the case reveals circumstances that are punishable by a custodial sentence. However, the aforementioned factors ought to be considered when sentencing and it is for this reason, I am of the considered view that the applicant will benefit from a non-custodial sentence. The period he has been in custody has shaped his character in different ways and to this end, he could greatly benefit from a non-custodial sentence.
7. From the foregoing and in considering the probation report, I am of the considered opinion that the applicant is fit for a non-custodial sentence given that he is a suitable candidate for reintegration. The applicant is therefore placed on probation for period remaining period, within which the probation officer should assist in ensuring that there is victim-offender mediation so as to avoid reoffending. 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 ELDORET THIS 17<sup>TH</sup> DAY OF MAY 2024.**

In the presence of

Mr. Jonathan Bungei for the state

Appellant

.....

**R. NYAKUNDI**

**JUDGE**

