



REPUBLIC OF KENYA



**Ekiru v Republic (Criminal Revision E079 of 2024)
[2024] KEHC 5231 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E079 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

AMBROSE EKIRU APPLICANT

AND

REPUBLIC RESPONDENT

(Being Review on Sentence from the Decision in Cr. Case E590 of 2023 by N. M Idagwa (SPM))

RULING

1. The applicant was charged with the offence of house breaking and stealing contrary to section 304(1) (b) as read with section 279(b) of the Penal Code. He equally faced 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 as a consequence, he was convicted on his own plea of guilty and sentenced to 2 years imprisonment, and also pay the victim Kshs. 160,000/=.
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 sentence review. On record I have a sentence review report. The report is responsive. The probation officer recommends that the applicant should serve a non-custodial sentence on probation. That the applicant having sometime in custody has learned a lot and he has equally lost a lot. I have considered the report and the offence in question.
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 factors aforementioned urge that first offenders be considered for a non-custodial sentence. The character and the age of the defendant also ought to be considered. The applicant is a first offender, he is 24 years old, and his character is not questionable at this stage. For these reasons, I am inclined to grant the applicant a chance to serve a non-custodial sentence. Additionally on the issue of paying back Kaha. 160,000/= to the victim, I am of the opinion that victim offender mediation should be explored. Let the applicant serve the remainder of the sentence under probation. The applicant shall be under the supervision of the Probation officer and should strictly report to the said officer and in turn monthly reports shall be filed in court. In default, the custodial sentence shall revert.

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

In the Presence of

Mr. Jonathan K. Bungei for the State

Appellant

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R. NYAKUNDI

JUDGE

