



**Etabo & 2 others v Republic (Criminal Revision E056 of 2024)  
[2024] KEHC 5676 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5676 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E056 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**MICHAEL ETABO ..... 1<sup>ST</sup> APPLICANT**

**MICHAEL ESEKON ..... 2<sup>ND</sup> APPLICANT**

**JOSEPH EBENYO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being Review on Sentence from the Decision in Cr., E027 of 2024 by Hon. Orimba on 15.1.2024)*

**RULING**

1. The applicants were charged with the offence of entering in a protected area without permit contrary to section 102(1)(a) of The Wildlife Conservation and management Act, 2013. They also faced an alternative charge of conveying fishing nets into a protected area contrary to section 102(1)(f) of The Wildlife Conservation and Management Act 2013. The third count was undertaking extracting activities in a Marine protected area contrary to section 102(1)(g) of the Wildlife Conservation and Management Act 2013.
2. The applicants pleaded guilty to the three counts before Hon. D. Orimba on 15<sup>th</sup> January, 2024 and as a consequence, they were convicted on their own plea of guilty and sentenced to a fine of Kshs. 50,000/= and in default 6 months imprisonment on each count.
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 a sentence review based on the sentence review reports on record. The reports for the applicants are positive. What I gather from all the reports is that the applicants are remorseful and



they plead for leniency from this court. The prison authorities have equally given a good report of the applicants. They have all been in good behavior while in prison. To the first applicant, the sentence report recommended a CSO at the Kalokol chief's camp for one month. As for the second applicant, his CSO was proposed to be at Kalokol mixed Primary School whereas the 3<sup>rd</sup> Applicant serves his from Naukur Chief's camp for three months.

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. The analysis of the facts of this case is such that it fits 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 a non-custodial sentence and as such the applicants shall serve a Community service order for a period of three months in their respective stations as proposed by the probation officer. Monthly reports shall be filed in court by the supervisor of the applicants through the probation officer. The essence of it is that any breach of any conditions by the applicants 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

Appellant

Mr. Jonathan K. Bungei for the State

**R. NYAKUNDI**

**JUDGE**

