



REPUBLIC OF KENYA



**Kanja v Republic (Criminal Revision E099 of 2024)  
[2024] KEHC 5268 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5268 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E099 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**VINCENT KANJA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being Review on Sentence from the Decision in Cr.  
Case E033/2023 by Hon. D. K Rono on 02/11/2023)*

**RULING**

1. The applicant was charged with the offence of breaking into a building with intent to commit a felony contrary to section 307 of the Penal Code.
2. The applicant pleaded not guilty to the offence and the matter went through a full trial, he was found guilty of the offence and sentenced to 1 year 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 is an 18-year-old who dropped out of school. Those who know him in the community, claim the boy can change if well guided. From the community's findings, the accused is said to have had good behavior but ruined by peers from the Turkana community which his parents want him to avoid and go for vocational training. The applicant is remorseful and seeks leniency. He has been recommended for a non-custodial sentence. The probation officer recommended a CSO at the DCC's office Lokichoggio.



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 age of the applicant, the circumstances fit the legal framework of the Community Service Act as an alternative sentence to imprisonment. He is a young person with a whole life ahead of him and a non-custodial sentence would be greatly beneficial with proper guidance and counselling. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for the remaining period at DCC's office Lokichoggio. 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 17<sup>TH</sup> DAY OF MAY 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

In the Presence of:

Mr. Jonathan Bungei for the State

Applicant

