



**Lopelu v Republic (Criminal Revision E107 of 2024)
[2024] KEHC 5245 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E107 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

JOHN ATOK LOPELU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of obtaining money by false pretense contrary to section 313 of the Penal Code.
2. The applicant pleaded guilty to the offence before Hon. D. Orimba on 5th January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 50,000 and in default serve 12 months 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. According to the report, the applicant has been participating staff line, spiritual gatherings and this has really helped to be busy and to think positive about his life after he comes out of prison. The entire family is ready and willing to welcome him and help him resettle back at home. On the applicant's part, he admitted the offence and prays for leniency. The Probation officer recommended him for a non-custodial sentence.
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 circumstances of the case are unfortunate for reasons that the applicant is a young person and he ought to be doing something meaningful with his life. I believe for the period he has been in custody his character has been shaped in different ways and to this end, he could greatly benefit from a non-custodial sentence.
7. From the analysis of the facts and in considering the probation report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. I believe it should have been important for the probation officer to interview the victim and get his side piece of the story. It could assist to address the root cause of the offence. The applicant is to serve the remainder of his sentence on probation. 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 17TH DAY OF MAY 2024.

In the Presence of

Mr. Jonathan K. Bungei for the State

Appellant

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R. NYAKUNDI

JUDGE

<i>CRIMINAL REVISION E 107 OF 2024</i>	0
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