



**Loperito v Republic (Criminal Revision E094 of 2024)
[2024] KEHC 5238 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E094 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

LOKITAUNG LOPERITO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on the night of 12th November, 2022 at Nabobongoit village in Lokichoggio location within Turkana County, the applicant together with others not before court stole ten (10) goats worth Kshs. 40,000/= the property of Ekitela Atapar.
2. The applicant pleaded guilty to the offence before Hon. C.A. Mayamba on 26th January, 2023 and as a consequence, he was convicted on his own plea of guilty 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. According to the report, the prison authorities stated that the applicant has been well behaved with no disciplinary charges pressed against him. That he has been attending group sessions of guidance and counselling. Regarding his attitude towards the offence, it was reported that the applicant regrets his criminal behavior and pleads that court's leniency. He promised to be well behaved if released back to the community. The report recommended that since he is youthful offender and since he has reformed, he is suitable for a non-custodial sentence. A community service Order at Lopiding Ass. Chief's Office was recommended.



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.
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 applicant serve the remainder of his sentence i.e. 9 months at Lopiding Ass. Chief's Office. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is 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 17TH DAY OF MAY 2024.

In the Presence of

Jonathan K. Bungei for the state Appellant

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R. NYAKUNDI

JUDGE

