



**Nang'ole v Republic (Criminal Revision E090 of 2024)
[2024] KEHC 5237 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E090 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

IMANI NANG'OLE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing by servant contrary to section 281 of the Penal Code. The particulars of the offence were that on 3rd May, 2023 at Lodwar township in Turkana Central Sub-County of Turkana County, the applicant stole two solar panels and one motor vehicle tyre valued at Kshs. 42,000/= the properties of Anne Wanjike which came to his possession
2. The applicant pleaded guilty to the offence before Hon. N.M. Idagwa on 9th May, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to 2 years 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 applicant was attached to building department while in prison and he acquired necessary masonry skills which will help him to earn a decent living in the future. He has also been counselled spiritually and psychologically by Lodwar GK prison social welfare on regularly basis. The report indicated that the applicant is remorseful and regrets his action and promised to be a law-abiding citizen. The report recommended that the applicant is suitable for community service Order at Lodwar township chief's office under supervision of chief Margaret Lomosing'o
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. 1 year at Lodwar township chief's office under the supervision of chief Margaret Lomosing'o . 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 Bungei

Appellant

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R. NYAKUNDI

JUDGE

