



**Oresto v Republic (Criminal Revision E104 of 2024)  
[2024] KEHC 5258 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5258 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E104 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**LOTTO ORESTO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of shop breaking and stealing contrary to section 306(a) of the Penal Code. He also faces an alternative charge of handling stolen property contrary to section 322(1) of the Penal Code.
2. The applicant pleaded guilty to the offence before Hon. Shivega on 24<sup>th</sup> October, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to 1 year imprisonment cumulative of the two counts.
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 a 19-year-old. He is remorseful and regrets committing the offence. He has been recommended for a non-custodial sentence. The probation officer recommended a CSO for the remaining period at the chief's office.
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. 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 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 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 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>Mike Judiciary</i>	0
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