



**Alwanyi v Republic (Criminal Revision E145 of 2024)
[2024] KEHC 6623 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E145 OF 2024
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

KUSH ALWANYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Mark Mugun for the state

1. The applicant was charged with the offence of stealing contrary to section 268(1) as read with Section 275 of the *Penal Code*. He also faces an alternative of handling stolen goods contrary to section 302(1) (2) of the *Penal Code*.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 11th March, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 20,000/= in default 6 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) and 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 class seven drop out who worked as a local garbage collector within Bahati market in Munyaka before his arrest. He is not married. He is remorseful and pleads for forgiveness and he is willing to pay for his deeds through community service at Soy Chief's office. The officer recommended that the applicant is suitable to be given a chance to



serve a non-custodial sentence and to this end it was proposed that he performs community service at Soy chief's office for the remaining period of 2 months.

5. Before imposing a non-custodial sentence, the court should consider the gravity of the offence, criminal history of the offender, character of the offender, protection of the community and the offender's responsibilities to third parties.
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 instant case presents an offence that is a perfect fit for a non-custodial sentence. I have considered the objectives of sentencing, age of the offender being one of them. He is a young person with a whole life ahead of him and I believe that part of the sentence served in custody has shaped his character. With proper guidance he could equally benefit from a non-custodial sentence. The applicant with the guidance of the probation officer should equally initiate victim offender mediation. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence on CSO at Soy chief's office for the remaining period and the Probation officer Soy to effect supervision as appropriate. 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 ELDORET THIS 7TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

