



**Dome v Republic (Criminal Revision E127 of 2024)  
[2024] KEHC 6954 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6954 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E127 OF 2024  
RN NYAKUNDI, J  
JUNE 11, 2024**

**BETWEEN**

**DOMINIC DOME ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

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 equally faced an alternative charge of handling stolen property contrary to section 322(1)(2) of the *Penal Code*. The particulars of the offence are that on 8<sup>th</sup> February, 2024 at around 1300hrs at Sergoit village in Moiben sub-county within Uasin Gishu County, the applicant jointly with others not before court stole twenty-seven bags of shelled maize valued at Kshs 108,000/= the property of Maritina Kibor.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 12<sup>th</sup> February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs 100,000 and in default to 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 sentence review report filed on 31<sup>st</sup> May, 2024. The said report records as follows:
5. That the applicant completed primary school but did not continue with secondary school education out of his own volition. He has been practicing farming and also is an experienced driver with tractors. He is married with two children of below ten years and they depend on him. The applicant stated in the report that he regrets his actions which were peer influenced. He is remorseful and pleads for



forgiveness. He said that he contacted the complainant to seek for forgiveness and he ready to pay for his deeds. The report recorded that the applicant has since served 7 months with four months remaining. The Probation officer stated that with the remaining four months, there exists opportunity to further facilitate his journey towards positive change and reintegration.

6. In light of the aforementioned facts, the report recommended a community service orders for the remaining period at Karuna police station.
7. 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.

In the case of *Republic v Felix Madalitso Keke* Confirmation Appeal No 404 of 2010 (unreported) where the court held as follows: "Considerations of the public interest when sentencing offenders must go beyond considerations of deterrence; there is always the consideration that the public whose interest the sentence wants to serve includes the prisoner before the court at first instance. It is in the public interest that sentences are passed which are not cruel, degrading and inhuman. Harsh or lenient sentences may not necessarily serve the public interest; they are likely to have an opposite effect. While sentences must fit the crime, the offender and the victim, they must also fit and cohere with overall sentencing goals, justice, reformation, restoration and rehabilitation. Our sentences may not be in the public interest if they only succeed in instilling crime and fail in bringing the prisoner a better person in society's continuum."

The court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alistar Anthony Pereira v State of Maharesbtra* at paragraph 70-71 where the court held as follows on sentencing "Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. the courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence, As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including Social interest and consciousness of the society for award of appropriate sentence



8. The foregoing factors are paramount and from them, I have found efficacy for community-based rehabilitation for the applicant. I find so because he is a first offender, the items were recovered, he has pleaded guilty, he has expressed remorse and he has served a substantial part of his sentence in prison, which I believe has shaped his character. In adherence to the probation officer's report, he is to perform community service at Karuna Police Station for a period of four months.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

**R. NYAKUNDI**

**JUDGE**

