



**Indeche v Republic (Criminal Revision E164 of 2024)  
[2024] KEHC 6959 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6959 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E164 OF 2024  
RN NYAKUNDI, J  
JUNE 11, 2024**

**BETWEEN**

**BRIAN INDECHE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of preparation to commit a felony contrary to section 308(3)(c) of the Penal Code. The particulars of the offence are that on 2<sup>nd</sup> February, 2024 at Kapkawa in Soy sub-county within Uasin Gishu county, the applicant was found in a dwelling house of Peter Kirong by day with intent to commit a felony therein to wit theft having taken precaution to conceal his presence.
2. The applicant pleaded guilty to the offence before Hon. B. Kiptoo on 19<sup>th</sup> February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 3 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 filed on 31<sup>st</sup> May, 2024. According to the report, the applicant is in good health and prior to his arrest he was a welder. He is married and a father to a 5-year-old child. It is recorded that his family eagerly awaits his release. It is also said that his family has been visiting him in prison.
5. The report further revealed that the complainant is a former employer. When contacted the complainant informed the probation officer that he recovered his machine and has no issue with the inmate if he is released early or not. As to his attitude to non-custodial measures, he is willing to serve a non-custodial sentence if he is released early. That he is focused on going back home to take care of



his young family. Given the said facts, the report recommended that the applicant is suitable for a non-custodial sentence.

6. 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.

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

7. The present circumstances of the case are that the applicant was prepared to commit a felony. He admitted to have had the intention of committing a felony. He is quite a young person and there is need for counseling and guidance so that he can live a meaningful life. I believe the short period he has been in custody has shaped his character in some way.
8. From the foregoing and in considering the sentencing report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. The applicant to this end is placed on a probation sentence of 1 year and 8 months. It is necessary that during the period under review while the applicant is serving probation sentence,



quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

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

.....

**R. NYAKUNDI**

**JUDGE**

