



**Kiprotich v Republic (Criminal Revision E129 of 2024)  
[2024] KEHC 6955 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6955 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E129 OF 2024  
RN NYAKUNDI, J  
JUNE 11, 2024**

**BETWEEN**

**EVANS KIPROTICH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of breaking into a building and committing a felony contrary to section 306(a) of the Penal Code.
2. The applicant pleaded not guilty to the offence and the matter underwent a full trial. At the end of it, the applicant was convicted of the charge and sentence to a fine of Kshs 20,000/= and 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) as conjunctively read with Article 50(6) (a)&(b) of the Constitution.
4. The applicant seeks a sentence review based on the probation report filed on 31<sup>st</sup> May, 2024. The report is responsive. According to the report, the applicant did not go beyond form 2 due to financial constraints in the family. After he dropped out of school he engaged in casual jobs until he was arrested and jailed for this offence. The prison authorities indicated that the applicant has reformed and he is well behaved. That he has been preaching and sharing the word of God to his fellow inmates. The offender has expressed willingness to serve non-custodial sentence. He takes prison rehabilitation positively and promises to respect people’s property and be a law-abiding citizen. Given the said facts, the probation officer recommended him for a Community Service Order for a period of 5 months at Moiben Health Center.



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. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the [Sentencing Guidelines](#) 2023 to be the following: -
  - i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - v. Community protection: to protect the community by incapacitating the offender.
  - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
  - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - viii. Reintegration: To facilitate the re-entry of the offender into the society.
7. My considered view is that the present case satisfies the above criteria for reasons that the applicant is remorseful, he is of a young age and the fact that for the period spent in custody he has been able to reform. I am of the considered view that if the applicant is given a chance to serve a non-custodial sentence, he will be able to benefit from proper guidance and counselling. All these factors considered wholesomely call for a non-custodial sentence.
8. This court is clothed with wide powers under article 165 (6) and (7) of the [Constitution](#) and section 362 as read with section 364 of the [CPC](#) to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
  - a. Youth of the applicant
  - b. Immaturity of the applicant
  - c. The previous good character of the applicant
  - d. Restitution of part of the stolen property to the complainant
  - e. A plea of guilty entered by the applicant



- f. Cooperation with the police by the applicant after the commission of the offence
  - g. Expression of remorse by the applicant before the trial court
9. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on CSO for the remaining 5 months at Moiben Health Centre. It is necessary that during the period under review while the applicant is serving the non-custodial sentence, monthly 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**

