



REPUBLIC OF KENYA



KENYA LAW
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**Kemei v Republic (Criminal Revision E137 of 2024)
[2024] KEHC 6700 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E137 OF 2024
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

ELKANA KIRWA KEMEI 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 as read with section 275 of the *Penal Code*.
2. The applicant pleaded guilty to the offence before Hon. K. Gweno on 29th January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 30,000/= 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 favorable. The report records that the applicant is very remorseful and pleads for forgiveness citing that drinking took toll of him and he has come to the realization that he messed up with his life and he is ready to turn it around. He is very much ready to pay for his deeds through community service at Chemenei Primary School. With this background, the probation officer recommended that the applicant is suitable for a non-custodial sentence. That he is willing to perform unpaid public work. He has been recommended to carry out the same at Chemenei Primary School for a period of two weeks.



5. In determining whether to impose 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. He has already served a better part of his sentence and a non-custodial sentence to this end could be beneficial with proper guidance. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence on CSO at Chemenei for the remaining period and the Probation officer Chemenei to effect supervision as appropriate.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 7TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

