



**Kiplagat v Republic (Criminal Revision E135 of 2024)  
[2024] KEHC 6619 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6619 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E135 OF 2024  
RN NYAKUNDI, J  
JUNE 7, 2024**

**BETWEEN**

**BRIAN KIPLAGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

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. P. Areri on 31<sup>st</sup> January, 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 probation report dated 28<sup>th</sup> March, 2024. The probation officer’s report indicates that the applicant is remorseful and prayed for a non-custodial sentence. However, the probation officer proposed that the Applicant is not suitable for a non-custodial sentence given that he has served only 3 months out of the three-year sentence. I couldn’t agree more. I have not had sight of any compelling reasons to consider the applicant for a non-custodial sentence.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -



6.
  - 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.
7. Upon perusal of the probation report, the same is not favorable and I am inclined to deny the application at the moment. Having taken into account the circumstances of the case and the fact that the applicant has not served a considerable part of his sentence, I am of the considered opinion that a sentence combining both custodial and non-custodial sentence will achieve the objective of both deterrence and rehabilitation.
8. Having taken further into account the doctrine of proportionality in sentence and the fact that the applicant has a balance of 2 years and 9 months, I have come to the logical conclusion that the sentence should be served as follows: -
  - (a) Nine (9) months imprisonment to act as deterrence and retribution.
  - (b) Two (2) years thereafter on probation for rehabilitation and placement of the convict into society.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF JUNE 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

