



**Kiplagat v Republic (Criminal Revision E140 of 2024)
[2024] KEHC 6621 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E140 OF 2024
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

KEVIN KIPLAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

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. D. Mikoyan on 19th February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to one year 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 sentence report dated 30th May, 2024. According to the report, the applicant comes from a family of two siblings. The home environment is of low-socio economic status and are financially disadvantaged but the home environment is relatively stable. Prior to his arrest he was working as a barber in Eldoret town. The prison authorities indicated that the applicant was carrying out farm work during his stay in prison. There was nothing negative about him. His family and the local administration are willing to be part of the re-integration process. As for the offender, he regrets his actions. He stated that he used the wrong way of solving a problem with his female friend and by taking her mobile phone which he was accused of stealing. He had sought reconciliation with the victim and they were willing to withdraw the matter but that was overtaken by events, which resulted in conviction and arrest. The probation officer recommended that the applicant is a young person who is not beyond redemption. He may be considered for a chance of



early release considering the fact that the mobile phone he was accused of was recovered and returned to the complainant years. He should therefore be considered to serve Community Service Orders (CSO) for a period of 5 months to be served at Kapsowar police station.

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.
 - 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.
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 a first offender, he is remorseful, he pleaded guilty and the applicant's home is favorable for his return. All these factors considered wholesomely, call for a non-custodial sentence. I see no reason why he should still serve a custodial sentence. The report has indicated that his home environment is favorable for his return. Additionally, I am of the view that it is a matter that could benefit from victim-offender mediation to resolve any other underlying issues. Therefore, I agree with the probation officer's report and he is to serve a 5 months CSO at Kapsowar Police station under supervision by the probation officer.

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



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R. NYAKUNDI
JUDGE

