



**Kipngetich v Republic (Criminal Revision E154 of 2024)
[2024] KEHC 6721 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6721 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E154 OF 2024
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

BRIAN KIPNGETICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:-

Mr. Mark Mugun for the state

1. The applicant was charged with the offence of Burglary contrary to section 304(2) and stealing contrary to section 279(b) of the Penal Code.
2. The applicant pleaded guilty to the offence before Hon. R. Otieno on 13th March, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 10,000/= in default 8 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 responsive. According to the report, the applicant is a class seven drop out who engages in motor cycle transport business to make ends meet. He is still single and stays on the family land at Chepkoiya area. He expresses remorse over his action and pleads for leniency from this court. The report further indicated that from inquiries conducted reveal that previously he has been of good character and conduct. The officer recommended that the applicant is suitable to be given a chance to serve a non-



custodial sentence and to this end it was proposed that he performs community service at Kesses dispensary for the remaining period of three weeks.

5. Before imposing 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. I have considered the objectives of sentencing, age of the offender being one of them. He is a young person with a whole life ahead of him and I believe that part of the sentence served in custody has shaped his character. With proper guidance he could equally benefit from a non-custodial sentence. The applicant with the guidance of the probation officer should equally initiate victim offender mediation. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence on CSO at Kesses dispensary for the remaining period and the Probation officer Kesses to effect supervision as appropriate.

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

R. NYAKUNDI

JUDGE

