



**Kipkoech v Republic (Criminal Revision E130 of 2024)
[2024] KEHC 6696 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6696 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E130 OF 2024
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

RAYMOND KIPKOECH 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. O. Mogire on 4th March, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 50,000/= and in default 12 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 regrets his actions which resulted from his negligence where he borrowed a mobile from the complainant but failed to return because it got spoiled and was difficult to repair. He is remorseful and pleads for forgiveness. He indicated that he initially tried to negotiate with the complainant before he was arraigned but could not reach an agreement due to the fact that he did not have the cash demanded by the complainant. The probation officer recommended that since he has committed to compensate the complainant and the fact that his family is willing to help him resettle and assist in continued community rehabilitation, he could be considered to serve Community Service (CSO) for a period of 5 months, Naiberi police station.



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. I have considered the objectives of sentencing, the gravity of the offence being one of them. I am of the view that courts should encourage victim offender mediation in such cases and while at it impose non-custodial sentences. The applicant has since served 2 months in custody and with proper guidance he could equally benefit from a non-custodial sentence. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence on CSO at Naiberi police station for the remaining period. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 6TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

