



**Kurgat v Republic (Criminal Revision E151 of 2024)
[2024] KEHC 6708 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6708 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E151 OF 2024
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

DAVID KURGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Mark Mugun for the state

1. The applicant was charged with three counts of the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the *Penal Code*. He equally faces the charge of handling stolen goods contrary to section 322(1) as read with section 322(2) of the *Penal Code* and the charge of breaking into a building and committing a felony contrary to section 306(a) of the
2. The applicant pleaded guilty to the offence before Hon. C. Kesse on 17th April, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to 9 months imprisonment cumulative of the three counts.
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. According to the report, while in custody, the applicant has not been able to be enrolled in a serious training course. He was assigned general cleaning duties and he has been able to benefit from spiritual guidance. The report records that the applicant regrets the offence and pleads for leniency.



He has a positive mind towards non-custodial sentencing options and promises to comply. The report makes recommendations in the following language:

“In view of our findings, we do find the inmate suitable to be given a chance to serve a non-custodial sentence. It is our recommendation that he be committed to perform community service at Langas health center for the remaining period of five months. Our office shall accord him the necessary supervision.”

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 1 month 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 Langas Health Center for the remaining period and the Probation officer Langas to effect supervision as appropriate. 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

