



**Maina v Republic (Criminal Revision E138 of 2024)  
[2024] KEHC 6956 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E138 OF 2024  
RN NYAKUNDI, J  
JUNE 11, 2024**

**BETWEEN**

**JOHN MAINA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of stealing contrary to section 275 of the Penal Code. The particulars of the offence are that on 5<sup>th</sup> August, 2021, at Huruma in Turbo sub-county within Uasin Gishu County stole Two Hundred Thousand Shillings property of Winfred Njoki.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 24<sup>th</sup> January, 2024 and as a consequence, on 7<sup>th</sup> February, 2024 he was convicted on his own plea of guilty and sentenced to a fine of Kshs 200,000/= in default serve 24 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) as conjunctively read with Article 50(6)(a) &(b) of the Constitution.
4. The applicant seeks a sentence review based on the sentence review report filed on 31<sup>st</sup> May, 2024. The report is favorable. It is reported that the applicant is a class 7 dropout due to lack of school fees. He then worked as driver till his arrest. It is reported that he is married to Grace Gathone with six children. During his stay in prison, he was carrying out farm work and the prison authorities have no negative report against him. The family at large is said to be planning on terms of repaying the victim the money that was stolen. The applicant is very remorseful and pleads for forgiveness. Given that background, the probation officer recommended a probation sentence for a period of 14 months.
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.

In the case of *Republic v Felix Madalitso Keke* Confirmation Appeal No 404 of 2010 (unreported) where the court held as follows: "Considerations of the public interest when sentencing offenders must go beyond considerations of deterrence; there is always the consideration that the public whose interest the sentence wants to serve includes the prisoner before the court at first instance. It is in the public interest that sentences are passed which are not cruel, degrading and inhuman. Harsh or lenient sentences may not necessarily serve the public interest; they are likely to have an opposite effect. While sentences must fit the crime, the offender and the victim, they must also fit and cohere with overall sentencing goals, justice, reformation, restoration and rehabilitation. Our sentences may not be in the public interest if they only succeed in instilling crime and fail in bringing the prisoner a better person in society's continuum."

The court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alistar Anthony Pereira v State of Maharesbtra* at paragraph 70-71 where the court held as follows on sentencing "Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. the courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence, As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including Social interest and consciousness of the society for award of appropriate sentence

6. The circumstances of the case in my opinion are favorable for a non-custodial sentence. The applicant admitted to the offence and together with his family, he has pledged to pay back the amount that he stole. I am of the considered opinion that if the applicant would greatly benefit from a non-custodial sentence where he will be accorded an opportunity to work on getting back the stolen money. I have taken into consideration the circumstances of the offence, the fact that he is a first offender and the fact that he has admitted to the offence and he is willing to retribute. The applicant with the supervision of the probation officer should attempt victim offender mediation while serving a non-custodial sentence to address any underlying issues. The applicant to this end is placed on a probation sentence of 1 year. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF JUNE 2024.**



**R. NYAKUNDI**  
**JUDGE**

