



**Oino v Republic (Criminal Revision E132 of 2024)
[2024] KEHC 6872 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E132 OF 2024
RN NYAKUNDI, J
JUNE 11, 2024**

BETWEEN

ANTONY ANDALO OINO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing of a motor cycle contrary to section 278(a) of the Penal code.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 16th February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 3 years 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 pursuant to the sentence review report filed on 31st May, 2024. The report is favorable. It is reported that the applicant is remorseful and prays for leniency from the honorable court. He regrets committing the offence and is willing to serve a non-custodial sentence. The report indicated that the applicant attended Kapkoi Sisal Secondary school where he attained a mean grade of D. He was to join college but the offence occurred and he was arrested. He stated that given an opportunity to serve a non-custodial sentence, it will afford him an opportunity to pursue his education. Given that background, the probation officer recommended a probation sentence for a period of 1 year.
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.
6. The circumstances of the case in my opinion are favorable for a non-custodial sentence. The applicant is of such a young age and it is unfortunate he has had to engage in the offence at this early stage. I am of the considered opinion that if the applicant would greatly benefit from a non-custodial sentence with proper guidance and counselling. I have taken into consideration the circumstances of the offence, the fact that he is a first offender and the fact that he is of a young age. 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 11TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

