



**Oduory v Republic (Criminal Revision E131 of 2024)
[2024] KEHC 6697 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E131 OF 2024
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

KEIPHAS ODUORY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:-

Mr Mugun for the State

1. The applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the *Penal Code*. The particulars of the offence are that on diverse dates between 17th and 25th day of January 2024 at Eldoret Main stage Turbo sub-county, within Uasin Gishu County, stole four (4) Trolleys valued at Kshs. 40,000/= the property of Ben Chelimo.
2. The applicant pleaded guilty to the offence before Hon. C. Kesse on 12th February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to 6 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. According to the report, the prison authorities have nothing negative against the applicant. The applicant is said to be remorseful and given a chance to serve non-custodial sentence he is ready to carry out community service orders at Huruma Primary. Given this background, the probation officer recommended that the applicant is suitable for a non-custodial sentence. He has been recommended for community service order at Huruma Primary station for the remaining period of two months.



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 Huruma Primary for the remaining period and the Probation officer Huruma 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 7TH DAY OF JUNE 2024.

R. NYAKUNDI

JUDGE

