



**Oundo v Republic (Criminal Revision E141 of 2024)
[2024] KEHC 6706 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E141 OF 2024
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

EUGINE OUNDO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Yusuf 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
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to 2 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 sentence review. On record I have a sentence review report. The report is responsive. The probation officer recommends that the applicant should serve a non-custodial sentence on probation where he will be offered close supervision, and psychological support and guidance to enable him live a positive life. I have considered the report and the offence in question.
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.
 - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. The factors aforementioned encourage that first offenders be considered for a non-custodial sentence. From the sentence review report, it is indicated that the applicant is remorseful and regrets his actions which were peer influenced where he stole a neighbor's mobile together with his peers. I am inclined to grant the applicant a chance to serve a non-custodial sentence. Let the applicant serve the remainder of the sentence under probation i.e. 13 months. The applicant shall be under the supervision of the Probation officer and should strictly report to the said officer and in turn monthly reports shall be filed in court. In default, the custodial sentence shall revert.

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

.....

R. NYAKUNDI

JUDGE

