



**Shikanda v Republic (Criminal Revision E142 of 2024)  
[2024] KEHC 6701 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E142 OF 2024  
RN NYAKUNDI, J  
JUNE 6, 2024**

**BETWEEN**

**DISHON SHIKANDA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mark Mugun for the state

1. The applicant was charged with the offence of stealing contrary to section 268 as read with 275 of the *Penal Code*.
2. The applicant has approached this court seeking a sentence review based on the probation report filed on 31<sup>st</sup> May, 2024. According to the report, the applicant is 24 years old and that he dropped out of school in form three in 2023 citing lack of school fees and the unwillingness of his father to support him. That the family have come forward to vouch for his release with a commitment that they will assist him re-settle and integrate back to the society. The acknowledged that due to his relatively young age, he needs proper guidance to wean him off from antisocial activities. According to the prison authorities, there was nothing negative to say about him. His family and the local administration are willing to be part of the re-integration process. The report records that the applicant regrets his actions which were peer influenced where he snatched a mobile phone from a reveler. He is remorseful and pleads for forgiveness. The probation officer recommended that he be considered to serve Probation Orders for a period of 13 months, through which the officer will initiate appropriate rehabilitation interventions to enable him change his ways.
3. 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.
4. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
- i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - v. Community protection: to protect the community by incapacitating the offender.
  - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
  - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - viii. Reintegration: To facilitate the re-entry of the offender into the society.
5. The applicant is a young person with a whole life ahead of him. He has shown remorse and served a substantial part of his sentence. In my considered view, the objectives of sentencing were meant to address such cases. Given that the applicant is young, I agree with the probation report that he can benefit from a non-custodial sentence.
6. This court is clothed with wide powers under article 165 (6) and (7) of *the Constitution* and section 362 as read with section 364 of the CPC to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
- a. Youth of the applicant
  - b. Immaturity of the applicant
  - c. The previous good character of the applicant
  - d. Restitution of part of the stolen property to the complainant
  - e. A plea of guilty entered by the applicant
  - f. Cooperation with the police by the applicant after the commission of the offence
  - g. Expression of remorse by the applicant before the trial court



7. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a probation sentence period of thirteen months. 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 6<sup>TH</sup> DAY OF JUNE 2024.**

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**R. NYAKUNDI**

**JUDGE**

