



**Tanui v Republic (Criminal Revision E167 of 2024)  
[2024] KEHC 6627 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6627 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E167 OF 2024  
RN NYAKUNDI, J  
JUNE 7, 2024**

**BETWEEN**

**JAPHETH KIMURGORI TANUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of store breaking and stealing contrary to section 306 (a) of the Penal Code.
2. The applicant pleaded guilty to the offence before Hon. R. Odenyo on 15<sup>th</sup> March, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 30,000/= in default 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. The report records that the applicant has been in prison for two months only working in the farm. However, he is said to have been of good behavior. He is remorseful and pleads for leniency from the court. With 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 Kuinet police station for the remaining period of one and half 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 Kuinet police station for the remaining period and the Probation officer Kuniyet 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 7<sup>TH</sup> DAY OF JUNE 2024.**

.....

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

