



**Vulukhu v Republic (Criminal Revision E126 of 2024)
[2024] KEHC 6870 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E126 OF 2024
RN NYAKUNDI, J
JUNE 11, 2024**

BETWEEN

ROBINSON VULUKHU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

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 before Hon. C. Kesse on 31st January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 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 a sentence review pursuant to the sentence review report filed on 31st May, 2024. The report is favorable and recommending the applicant for a non-custodial sentence, the probation officer highlights as follows:

“The inmate is a young person who is not beyond redemption and can still be assisted to redress his steps including possibility of continuing with secondary education or enrolling for a vocational course. He is remorseful and is willing to serve a non-custodial sentence. Further his family members have come forward to vouch for his release with a commitment to help him resettle and assist in continued community rehabilitation. We therefore recommend that he be considered to serve Probation orders for a period of 13 months, through which we will initiate appropriate rehabilitation interventions to enable him change his ways.”



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.

In the case of *Republic v Felix Madalitso Keke* Confirmation Appeal No 404 of 2010 (unreported) where the court held as follows:

“Considerations of the public interest when sentencing offenders must go beyond considerations of deterrence; there is always the consideration that the public whose interest the sentence wants to serve includes the prisoner before the court at first instance. It is in the public interest that sentences are passed which are not cruel, degrading and inhuman. Harsh or lenient sentences may not necessarily serve the public interest; they are likely to have an opposite effect. While sentences must fit the crime, the offender and the victim, they must also fit and cohere with overall sentencing goals, justice, reformation, restoration and rehabilitation. Our sentences may not be in the public interest if they only succeed in instilling crime and fail in bringing the prisoner a better person in society's continuum.”

The court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alistar Anthony Pereira v State of Maharesbtra* at paragraph 70-71 where the court held as follows on sentencing:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. the courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence, As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including Social interest and consciousness of the society for award of appropriate sentence

6. Its worrying to have such a young person engage himself in stealing. It is recorded that he is a dropout due to lack of school fees and as a result he has had a negative influence. The report also indicated that he was raised in a crime prone area i.e. Langas estate in Eldoret town. I strongly believe that all these circumstances should not be reason enough to engage in destructive activities. As stated in the report there is need for proper guidance and direction to wean him off from antisocial activities. I have



also taken note that the father has committed to find a suitable option for him to continue with his education or enroll for a vocational course.

7. From the above analysis and in considering the sentencing report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. There is need however that victim offender-mediation be undertaken under the leadership of the probation officer to effectively deal with the underlying issues that might have developed due to the incidence. The applicant to this end is placed on a probation sentence of 13 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 11TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

