



**Eilen v Republic (Criminal Revision E116 of 2024)
[2024] KEHC 8293 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E116 OF 2024
RN NYAKUNDI, J
JULY 11, 2024**

BETWEEN

SAMUEL EILEN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Yusuf for the state

1. The applicant was charged with the offence of killing an animal with the intent to steal contrary to section 289 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 a fine of Kshs. 15,000/= in default serve 6 months imprisonment. He has since served close to two months in custody.
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 based on the sentence review report on record. The report is favorable. It is reported that the applicant is a class 1 dropout thus he is just a herdsman. The applicant was herding at the forest while was hungry, when hunger persisted, he could not resist and responded by killing the goat in order to get something to eat. He is remorseful and asks for forgiveness for his deeds. With these facts, the probation officer recommended a community service order at Salvation Army Secondary School for a period of five months.



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.
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. Having gone through the facts of the present case, the circumstances fit the legal framework of the Community Service Act as an alternative sentence to imprisonment. I am of the considered view that the circumstances of this case from the onset called for a non-custodial sentence. I believe a non-custodial sentence would be greatly benefit the applicant with proper guidance and counselling. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for a period of five months at Salvation Army Secondary School. The probation officer has an obligation in ensuring that the applicant undergoes professional counselling during this period. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and 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.
8. It is so ordered.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 11TH DAY OF JULY 2024.

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R. NYAKUNDI
JUDGE

