



**Eroo v Republic (Criminal Revision E131 of 2024)
[2024] KEHC 8356 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E131 OF 2024**

RN NYAKUNDI, J

JULY 9, 2024

BETWEEN

JEREMIAH EROO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram: Before Justice R. Nyakundi

Mr. Onkoba 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*. The particulars of the offence are that on 18th March, 2024 at Caanan village in Turkana Central Sub- County within Turkana, the applicant stole Kshs. 2,500/= and transferred Kshs. 1650/= to his Mpesa account all amounting to Kshs. 4,150/= the property of Haron Ngasike.
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. 10,000/= in default 1 year 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 based on the sentence review reports on record. The report is responsive. It is recorded that the applicant is a 20-year-old offender who hails from Canaan village in Turkana County. He is a third born in a family of seven children. Both parents are alive and the mother works as a cleaner at Turkana University. He is a form three dropout and a computer student at Juluok Vocational training institute. The local administration considers the inmate as a good person while the



prison authorities indicate he has reformed. The applicant's mother confirmed that the family is ready to receive him if released on non-custodial sentence.

5. He was recommended for a ten months Community service order at Canaan primary school under the supervision of the school head teacher.
6. 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.
7. In addition, the *Community Service Orders Act* makes allow the 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.
8. I have carefully gone through the record and considered the factual matrix of the case. I am of the view that there are cases such as this, especially when the offender is of such a young age, victim offender mediation should be encouraged. The case involves stealing of Kshs. 2,500/= and Kshs. 1650/=. I believe that the time he has spent in custody has shaped his character and it is only proper that he is guided and counselled through a non-custodial sentence. I believe the non-custodial sentence will go a long way in trying to achieve the objectives of sentencing. It is equally my considered view that the 1-year imprisonment ought to be reviewed. I have taken note that the Probation officer recommends 10 months for a non-custodial sentence. It is however my considered opinion that the a 5 months non-custodial sentence is sufficient.
9. Consequently, the effective measure is to have the applicant serve a community service order for a period of 5 months Canaan Primary School under the supervision of the school head teacher. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The same is informed by the fact that there is need to track progress on the effectiveness of the 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.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 9TH DAY OF JULY 2024.

.....

R. NYAKUNDI
JUDGE

