



**Erupe v Republic (Criminal Revision E133 of 2024)  
[2024] KEHC 8359 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8359 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E133 OF 2024  
RN NYAKUNDI, J  
JULY 9, 2024**

**BETWEEN**

**ERUKUDI ERUPE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

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.
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. 20,000/= in default 6- months imprisonment.
3. The applicant is before 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 relying on the sentence review report on record. The report is favorable. The circumstances of the offence as recorded in the report are that the applicant stole because he had stayed for two days without food. He wanted to sell in order to get money. It is reported that he is a 24-year-old and a class seven drop out. He is a hawker and currently stays with his cousin in in Lodwar town. The prison authorities spoke well of him as someone who has changed. He is remorseful and a hardworking person. He pleaded for a second chance.
5. He was recommended for a five months Community service order at Lodwar Probation office.



6. This court in deciding on whether to impose a non-custodial sentence or not, is required to consider the following factors: Gravity of the offence, criminal history of the offender, character of the offender, protection of the community, offender's responsibility to third parties.
7. In addition, the *Community Service Orders Act* allows 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. Having considered the facts of the case, I am of the considered view that the facts as presented in the present case are a perfect fit for a non-custodial sentence considering that the offender is also fairly young. The circumstances are that the applicant stole fencing angle lines all valued at Kshs. 40,000/=. In such cases, I have always held the view that such circumstances call for a victim offender mediation. The parties should be encouraged to settle the issue between themselves to address any other underlying issues.
9. I believe that the time the applicant 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.
10. Consequently, the effective measure is to have the applicant serve a community service order for a period of 5 months at Lodwar Probation Office. 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 9<sup>TH</sup> DAY OF JULY 2024.**

.....

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

