



REPUBLIC OF KENYA



**Nasimiyu v Republic (Criminal Revision E461 of 2024)  
[2024] KEHC 15190 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E461 OF 2024  
RN NYAKUNDI, J  
DECEMBER 3, 2024**

**BETWEEN**

**ELIZABETH NASIMIYU ALIAS MEYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mr. Mugun for the state

1. The applicant was charged with the offence of child stealing contrary to section 174(1)(a) of the Penal Code. The particulars of the offence are that on the 7<sup>th</sup> February, 2023 within Uasin Gishu County fraudulently took CM, a child aged 12 years with intent to deprive LO (guardian) who had the lawful care of the possession of the said CM.
2. The applicant entered a plea of guilty for the offense and as a result he was sentenced to a fine of Kshs. 100,000/= and in default, 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 review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court.
5. Upon careful review of the case record, this court observes that the applicant has undergone a period of incarceration spanning approximately nine months. This substantial duration has afforded the applicant meaningful opportunity for introspection and rehabilitation. Having considered the



punitive and reformative aspects of the sentence served thus far, the court is satisfied that the period of imprisonment has effectively fulfilled its deterrent purpose. In the interest of justice and proportional sentencing, this court finds merit in converting the remainder of the custodial sentence to a non-custodial alternative.

6. In reaching this considered determination, the court has been guided by several fundamental principles of sentencing. Paramount among these is the principle of proportionality, which requires a careful balancing of the punishment against both the gravity of the offense and the time already served. The court has taken particular note of the applicant's status as a first-time offender, a factor that weighs significantly in favor of rehabilitative sentencing measures. Furthermore, while the court does not condone the criminal conduct, it acknowledges the contextual circumstances.
7. While this court acknowledges the serious nature of the offense of child stealing and its potential impact on both the victim and society, it must also consider the rehabilitative aspect of sentencing. The period of incarceration already served has provided significant punishment and deterrence. The court is persuaded that structured probation supervision would now provide an effective framework for the applicant's rehabilitation while maintaining adequate safeguards for society's protection.
8. In light of the foregoing considerations, this court hereby orders the immediate conversion of the applicant's remaining custodial sentence to probation. The applicant shall be subject to probation supervision for the duration of the unexpired sentence. During this probationary period, the applicant shall strictly adhere to regular reporting requirements as prescribed by the assigned probation officer and shall actively participate in any designated counseling or rehabilitation programs. The court directs the probation officer to submit comprehensive monthly progress reports detailing the applicant's compliance and rehabilitation progress. This court emphatically notes that any breach of the stipulated probation conditions may result in the immediate reinstatement of custodial sentence for the remaining period.
9. It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 3<sup>RD</sup> DAY OF DECEMBER 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

