



REPUBLIC OF KENYA



**Otieno v Republic (Criminal Revision E255 of 2024)
[2024] KEHC 15159 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E255 OF 2024
RN NYAKUNDI, J
DECEMBER 3, 2024**

BETWEEN

JEREMIAH OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of stealing contrary to section 268(1) as read with section 275 of the Penal code. The particulars of the offence are that on 16th December, 2023 at Duka Mbili Langas Kapseret Sub-County stole mobile phones Nokia G20, Nokia C21 and Tecno pop 5 all valued at Kshs. 87,449/= the property of Gideon Ouma. The applicant equally faced alternative charges of handling stolen property contrary to section 322(1)(2) of the Penal Code, stealing contrary to section 268(1) as read with section 275 of the Penal Code and Malicious damage of property contrary to section 339(1) of the Penal Code.
2. The applicant was found guilty on two counts and discharged on the third count. On the first count he was sentenced to Kshs. 50,000/= and in default 12 months' imprisonment on the first count. On the second count, the applicant was sentenced to 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 a sentence review. He prays that he may be allowed to serve a non-custodial sentence. 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.
5. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
- i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - v. Community protection: to protect the community by incapacitating the offender.
 - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - viii. Reintegration: To facilitate the re-entry of the offender into the society.
6. My considered view is that considering the aforementioned factors and the objectives of sentencing in totality, the applicant ought to serve a non-custodial sentence. I believe the period he has served in custody has shaped his character. I see no reason why he should continue to serve a custodial sentence. In the end, I am inclined to direct that he serves a non-custodial sentence for a period of 8 months on both counts. The same shall be done under the supervision of the probation officer. It is expected that during this period the probation officer shall undertake victim offender mediation, and follow up on any other underlying issues for the applicant to stay away from any criminal activities and that any re-offending of any nature shall suspend the probation order and the court shall be at liberty to resentence the applicant to serve the full term of imprisonment.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 3RD DAY OF DECEMBER 2024.

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R. NYAKUNDI
JUDGE

