



**Wachiya v Republic (Criminal Revision E469 of 2024)  
[2024] KEHC 15181 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15181 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E469 OF 2024  
RN NYAKUNDI, J  
DECEMBER 3, 2024**

**BETWEEN**

**WILSON KHISA WACHIYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with two counts for the offence of stealing contrary to section 275 of the *Penal Code*. He also faced an alternative charge of handling stolen property contrary to section 322 (1) and (2) of the Penal Code. Particulars of the offence in count I are that on or before 13<sup>th</sup> November, 2019 at unknown time at Elgon View Estate in Ainabkoi sub-county within Uasin Gishu County, the accused stole a metallic safe box valued at Kshs 450,000/=, Ten thousand US Dollars (10,000/= \$), cheque book and an invoice book the property of Edna Cheptoo Rotich.
2. The particulars in count II are that on or before 13<sup>th</sup> November, 2019 at unknown time at Elgon view estate in Ainabkoi sub-county within Uasin Gishu County, the accused stole Kshs 200,000 (two hundred thousand) the property of Henry Kiplagat Rotich.
3. In the alternative count particulars are that on the 27<sup>th</sup> November, 2019 at Brigadier market in Kimilili Sub-County of Bungoma County otherwise than in the cause of stealing dishonestly retained a consolidated Bank cheque Book and an invoice book in the names of Samich Construction Company Limited belonging to Edna Cheptoo Rotich knowing or having reason to believe them to be stolen property.
4. The applicant pleaded not guilty to the offence which the matter go through a full cycle and judgment was rendered, holding the applicant liable and guilty of the offence in count I and II. The applicant was then sentenced to a fine of Kshs 200,000 in default to serve two years in prison.



5. 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*.
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. Looking at the circumstances of the offences, I strongly believe that there is need for proper guidance and direction. I have also taken note that the father has committed to find a suitable option for him to continue with his education or enroll for a vocational course.
8. From the above analysis, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. There is need however that victim offender-mediation be undertaken under the leadership of the probation officer to effectively deal with the underlying issues that might have developed due to the incidence. The applicant to this end is placed on a probation sentence of 13 months. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

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

.....

**R. NYAKUNDI**

**JUDGE**

