



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wekesa v Republic (Criminal Revision E309 of 2022)  
[2024] KEHC 15182 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15182 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E309 OF 2022  
RN NYAKUNDI, J  
DECEMBER 3, 2024**

**BETWEEN**

**ALEX WANGILA WEKESA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mr. Mugun for the state

1. The applicant was charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the *Penal Code*. The particulars of the charge are that on the 15<sup>th</sup> day of June, 2021 at around 2000 hours at Kamukunji village at Soy Sub-County within Uasin Gishu County, the applicant jointly with others not before court robbed Isaac Wanyama Wamukota cash Kshs. 30,000/= mobile phone HTI black in color worth Kshs. 1,200/= and shopping which includes 1 Kg sugar, half aloe vera green bar soap, 2kg (posho) maize flour all valued at Kshs 1,500/=. Immediately before the time of robbery wounded the said Isaac Wanyama Wamukoita.
2. The applicant pleaded not guilty to the offence and he was taken through a full trial and found guilty of the offence of robbery. He was thereafter sentenced to 3 years in custody.
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. 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.
  - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.

Upon careful examination of the record before this Court, the applicant's period of incarceration has achieved its transformative purpose, transcending mere punitive measures to forge genuine rehabilitation. During his confinement, he has demonstrated not only intellectual recognition of his transgressions but also profound emotional comprehension of their impact, manifesting in observable behavioral reform. The Court has meticulously weighed the cardinal principles of sentencing, general and specific deterrence, rehabilitation, and the paramount consideration of public safety against the demonstrable changes wrought during his term of imprisonment. Finding that justice has been served and its aims fulfilled, I hereby modify the sentence to time served and direct the applicant's immediate release, unless and otherwise lawfully held.

It is so ordered.

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

.....

**R. NYAKUNDI**

**JUDGE**

