



REPUBLIC OF KENYA



**Yego v Republic (Criminal Revision E481 of 2024)
[2024] KEHC 15180 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E481 OF 2024
RN NYAKUNDI, J
DECEMBER 3, 2024**

BETWEEN

NICHOLAS KIPKOECH YEGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing by servant contrary to section 281 of the [Penal Code](#). The particulars of the offence are that on diverse dates between 13th and 14th January 2024 at unknown time at Chemochoch village in Moiben sub-county within Uasin Gishu County, being a servant to Jane Jemutai Ruto stole five bags of maize of each 90 kgs valued at Kshs. 18,500/=, 100 chicken valued at Kshs. 50,000/=, a Mwangaza cylinder with grills 6 Kgs valued at Kshs. 3,500/= the properties of Jane Jemutai Ruto which came into his possession by virtue of his employment.
2. The applicant entered a guilty plea for the offense, resulting in his conviction. The court imposed a 1-year sentence. At the trial court the probation officer's report highlighted that the applicant takes responsibility of his offence and is apologetic and pleaded for a lenient sentence. He stated that the complainant did not pay him his salary for 14 months. So he decided to steal the said items to recover his dues. The Probation officer recommended that the complainant's request for compensation be considered.
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. This court observes that the applicant has served approximately nine months in custody, which period has provided ample opportunity for reflection and rehabilitation. The court notes that this period of incarceration has served as a substantial deterrent, and the interests of justice would be adequately served by converting the remaining period to a non-custodial sentence.
6. In arriving at this determination, the court has been guided by several pertinent principles: First, the need to ensure that the punishment remains proportionate to the offense while recognizing the time already served. Second, the fact that the applicant is a first-time offender, which merits consideration for alternative sentencing. Third, the underlying circumstances of the offense, particularly the claim of unpaid wages spanning 14 months, which while not justifying the criminal act, provides important context. Fourth, the probation officer's report indicating the applicant's remorse and willingness to take responsibility for his actions.
7. The court is particularly mindful that the offense occurred within an employment relationship, where there appears to be underlying disputes that would benefit from structured resolution. The court considers that supervised rehabilitation and reintegration through probation would serve both the interests of justice and society better than continued incarceration.
8. Consequently, this court hereby orders that the remainder of the applicant's custodial sentence be converted to probation effective immediately. The applicant shall be under probation supervision for the remaining period of his sentence, approximately three months. During this period, the applicant shall report to the probation officer as directed and participate in any counseling or rehabilitation programs as prescribed by the probation officer. The probation officer is directed to submit monthly progress reports to this court on the applicant's compliance and progress. The court emphasizes that any violation of these probation terms may result in the reinstatement of the custodial sentence for the remaining period.
9. It is so ordered.

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

R. NYAKUNDI

JUDGE

Representation:-

Mr. Mugun for the State

