



**Mike v Republic (Criminal Revision E017 of 2024)  
[2024] KEHC 3938 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3938 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E017 OF 2024  
RN NYAKUNDI, J  
APRIL 23, 2024**

**BETWEEN**

**MIYANGO MIKE ..... 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 as read with section 275 of the Penal code. The particulars of the offence are that on the 29<sup>th</sup> day of December, 2023 at around 1000hrs at Mariot estate race-course ward in Kapseret sub-county within Uasin-Gishu County, stole 65 kgs of Maize valued at Kshs. 6,500/=, the property of James Rotich.
2. The applicant pleaded guilty to the offence before Hon. Kesse on 3<sup>rd</sup> January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 6 months 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. The probation officer filed a report on 11<sup>th</sup> April, 2024. The Probation report is not responsive. The Probation officer indicated that the applicant is a flight risk for reasons that he is not of Kenyan origin and therefore he should serve the remaining period in custody.



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.
6. 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.
7. 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. He has a remainder of two months and 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. Yes, he is not of the Kenyan origin but I see no reason why one would flee from the country for such a misdemeanor, and which in any case the stolen item was recovered. In the end, I am inclined to direct that he serves a non-custodial sentence for the remainder of the sentence period. The applicant is hereby placed on probation for 2 months. The same shall be done under the supervision of the probation officer.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF APRIL 2024.**

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**R. NYAKUNDI**  
**JUDGE**

