



**Adala v Republic (Criminal Revision E038 of 2024)  
[2024] KEHC 3940 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3940 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E038 OF 2024  
RN NYAKUNDI, J  
APRIL 23, 2024**

**BETWEEN**

**PAUL ADALA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

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 3<sup>rd</sup> day of October, 2023 at Eldoret town in Turbo Sub- County within Uasin Gishu County, stole a catalytic Converter (Mafura) from a motor vehicle Registration No. KDM 667L make a Probox valued at Kshs. 67,000/= the property of Jonah Kibor Kilimo.
2. The applicant pleaded guilty to the offence before Hon. Kesse on 30<sup>th</sup> October, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 70,000/= in default serve 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. The probation officer filed a report on 17<sup>th</sup> April, 2024. The Probation report is responsive. The Probation officer reported that the complainant has since forgiven the applicant and he has no objection to his release. He further stated that the inmate is remorseful and should be considered for an early release.
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. I am of the considered view that when all the aforementioned factors are incorporated into sentencing together with the report, the applicant is a qualified candidate for a non-custodial sentence. The fact that the Complainant has already forgiven him means they have been engaging and there are no qualms between the parties. I am inclined to order that he serves a non-custodial sentence for the remaining period. The applicant is hereby placed on probation for 9 months. The same shall be done under the supervision of the probation officer and in turn, monthly reports shall be filed to ensure compliance and efficiency of the sentence.

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

**R. NYAKUNDI**

**JUDGE**

