



REPUBLIC OF KENYA



KENYA LAW
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**Kemboi v Republic (Criminal Revision E046 of 2024)
[2024] KEHC 3937 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E046 OF 2024
RN NYAKUNDI, J
APRIL 23, 2024**

BETWEEN

FESTUS KEMBOI 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*.
2. The applicant pleaded guilty to the offence before Hon. Barasa on 11th December, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to 1 year 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 11th April, 2024. The Probation report is responsive. The Probation officer recommended the applicant serves a community service at Huruma Sub-County hospital.
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 have considered the said charge and the aforementioned factors and I am of the view that the applicant herein is a perfect fit for a non-custodial sentence and he shall proceed to serve the same for the remaining period. A community service order is therefore efficient for the remaining period. He is directed to serve the same for 9 months at Kesses central police station. During this period, the probation officer is obligated to file monthly reports in court in ensuring compliance of the sentence and its effectiveness.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF APRIL 2024.

R. NYAKUNDI

JUDGE

