



**Logoi & another v Republic (Criminal Revision E107 of 2024)
[2024] KEHC 3968 (KLR) (23 April 2024) (Revision)**

Neutral citation: [2024] KEHC 3968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E107 OF 2024
RN NYAKUNDI, J
APRIL 23, 2024**

BETWEEN

JACOB LOGOI 1ST APPLICANT

GEORGE SHUNA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

REVISION

1. The Applicants were charged with the offence of Store Breaking and Committing a felony contrary to Section 306 (A) of the Penal Code. The brief facts are that on the night of 24th and 25th December 2023 at known hours at Kipsombe farm village, Kipsombe Location in Soy sub-county within Uasin Gishu County jointly with others not before court broke and entered maize store, store of Paul Kiprop and committed a felony namely theft of ½ bag of unshelled maize valued at Kshs 1000 the property of Paul Kiprop.
2. The Applicants on their own plea admitted the offence as a consequence a plea of guilty was recorded by the learned trial learned magistrate who later convicted each one of them followed by a sentence of 3 years imprisonment. When the matter came up for hearing on review of custodial sentence, to be substituted with non-custodial sentence this court had to call for the record pursuant to Article 50 (2) (p) & (q) & (6) (a) & (b) of the Constitution as read with Section 357, 362, 364, & 383 of the Criminal Procedure Code.
3. The applicants in the application sought a sentence review based on the Probation Officers Report dated March 21, 2024. In brief the 1st Applicant Jacob Logoi had this personal antecedents factored in the report that the inmate before this Honourable court is the son of a single mother by the name Teresa Yolei who is a peasant farmer. He is the fifth born in a family of nine children where there are still school going. He went to school until form where he scored a mean grade of Dplus and in planning



to take a mechanical course. He is not married and has been living with his mother. He did casual jobs to earn his living. He is a first time offender and is of good health. The family members are willing to welcome him back home. We were also able to trace the complainant who indicated to us that he has no problem if the inmate is granted a non-custodial sentence. Whereas the second Applicant's Probation Reports captured the following features on the current home and personal circumstances, the inmate before this Honourable court is the son of Samson Hamasi who does casual jobs to earn a living and Gladies Hawile who is a house manager. He is the fifth born in a family of seven children here two are still school going. He went to school until form three where he dropped because he lacked financial support. He is not married and has been living with his parents. He did casual jobs to earn his living. He is a first time offender and is of good health. The family members are willing to welcome him back home. We were also able to trace the complainant who indicated to us that he has no problem if the inmate is granted a non-custodial sentence.

4. In determining whether to review the custodial sentence and have it substituted with a non- custodial sentence some of the key principles and objectives of sentencing are worthy discussing in this ruling.
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. Cases may have both aggravating and mitigating factors. Whether any factor has an aggravating or mitigating effect will depend on all of the circumstances of the case. Some aggravating factors can be



integral features of certain offences. In such cases, the court will already have reflected this in assessing seriousness at step 1, and they should not be used as a reason for further increasing the sentence. The court using a combination of factors in respect to this matter there are sufficient reasons to review the custodial sentence imposed by the trial court and have the Applicants be placed on CSO at Tarakwa dispensary for the balance of the period stated to be completed in prison.

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

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R. NYAKUNDI

JUDGE

