



**Tioko v Republic (Criminal Revision E019 of 2024)
[2024] KEHC 5979 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E019 OF 2024
RN NYAKUNDI, J
MAY 28, 2024**

BETWEEN

BRIAN TIOKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with three counts. The offence of stealing contrary to section 268 as read with Section 275 of the Penal Code. The alternative charge was Handling stolen goods contrary to section 322(1)(2) of the Penal Code. Additionally, he was charged with two counts of the offence of assault causing bodily harm contrary to section 251 of the Penal Code.
2. The applicant pleaded guilty to the offence before Hon. D. Orimba on 18th July, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 10,000/= in default 6 months imprisonment on the first count whereas he was fined to Kshs. 10,000/= in default 6 months on each of the second count and 3rd count. Cumulatively, the applicant was sentenced to a fine of Kshs. 30,000/= in default 18 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 based on the sentence review report on record. The report is positive. The prison authorities gave a good report of the applicant. It was indicated that for the time he has been in custody, he has acquired necessary masonry skills which will help him to earn a decent living in the future. He has also been counseled spiritually and psychologically. The authorities stated that the applicant has had no any indiscipline cases. He is remorseful and regrets his action and he



promised to be a law-abiding citizen. He was recommended for a community service order at Lodwar township chief's office under supervision of chief Margaret Lomosing'o.

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. Further to the aforementioned, the Community Service Orders Act makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
7. I have appreciated the facts of the instant case and in considering the nature of the offence and age of the applicant, I am of the view that the circumstances fit the legal framework of the Community Service Act as an alternative sentence to imprisonment. The Applicant is a young man who needs to work out his future life, he needs proper guidance and counselling while serving a non-custodial sentence. I believe the non-custodial sentence will go a long way in trying to achieve the objectives of sentencing. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for the remaining period at Lodwar township chief's office under supervision of chief Margaret Lomosing'o. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The same is informed by the fact that there is need to track progress on the effectiveness of the sentence and that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 28TH DAY OF MAY 2024.

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R. NYAKUNDI

JUDGE

