



**Etabo & another v Republic (Criminal Revision E012 of 2024)
[2024] KEHC 6020 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E012 OF 2024
RN NYAKUNDI, J
MAY 28, 2024**

BETWEEN

SHADRACK ETABO 1ST APPLICANT

JACKSON ECHWA ALIAS NDEGE 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Edward Kakoi for the state

1. The applicants were 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 15th September, 2023 at Loropiyo beach in Turkana Central Sub-County within Turkana County, the applicants stole fishing nets valued at Kshs. 25,000/= property of Margaret Lodome.
2. The applicants pleaded guilty to the offence before Hon. N.M. Idagwa on 14th November, 2023 and as a consequence, they were convicted on their own plea of guilty and sentenced to 1 year imprisonment and each to pay the victim Kshs. 12,500/=.
3. The applicants have 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 applicants seek a sentence review based on the sentence review reports on record. The reports are responsive. As for the 1st Applicant, it is reported that the while in prison the applicant was attached to general cleanness department and he has been counselled spiritually and psychologically by Lodwar GK prison social welfare. The prison authorities gave a good report of the 1st applicant. It is indicated



that he is remorseful and he regrets his action and also promised to be a law-abiding citizen going to the future if granted a chance to serve the non-custodial sentence by this honorable court. He was recommended for a community service order at Kalokol chief's office under the supervision of chief John Emojong. The report for the 2nd applicant is not any different. He is equally remorseful and regrets committing the offence. He was equally recommended for a non-custodial sentence at Kalokol chief's office under the supervision of chief John Emojong.

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 carefully gone through the record and considered the factual matrix of the case. I am of the view that there are cases such as this where if the offender has been condemned to pay the loss occasioned by stealing, particularly circumstances such as in this case, a non-custodial sentence best fits such offenders and when the offenders are of a young age. The case involves stealing of fishing nets worth Kshs. 25,000/= and the applicants were directed to pay back the victim. I believe that the time they have spent in custody has shaped their character and it is only proper that they are guided and counselled through a non-custodial sentence. I believe the non-custodial sentence will go a long way in trying to achieve the objectives of sentencing.
8. Consequently, the effective measure as recommended by the probation officer is to have the applicants serve a community service order for the remaining period at Kalokol chief's office under the supervision of chief John Emojong. Monthly reports shall be filed in court by the supervisor of the applicants 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

