



**Ewoton v Republic (Criminal Revision E014 of 2024)  
[2024] KEHC 5971 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E014 OF 2024  
RN NYAKUNDI, J  
MAY 28, 2024**

**BETWEEN**

**JACKSON EWOTON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

Mr. Yusuf for the state

1. The applicant was charged with the offence of cheating contrary to section 315 of the Penal Code. He equally faced an alternative count of stealing contrary to section 268(1) as read with Section 275 of the Penal Code. The particulars of the offence were that on the 10<sup>th</sup> day of March, 2023 at Kanamkemer village within Turkana central Sub- County of Turkana County by means of fraudulent tricks obtained Kshs. 1,750/= from Purity Mwendwa Mwirigi
2. The applicant pleaded guilty to the offence before Hon. M.K Muchiri on 14<sup>th</sup> March, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 5,000/= in default 12 months imprisonment on the first count whereas he was fined to Kshs. 10,000/= in default 12 months on the second count.
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 Katilia sub-chief office in Turaka east.

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. He is a young person with a whole life ahead of him and a non-custodial sentence would be greatly beneficial with proper guidance and counselling. 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 Katilia sub-chief office in Turkana East. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial 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 28<sup>TH</sup> DAY OF MAY 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

