



**Kaguru v Republic (Criminal Revision E339 of 2024)
[2024] KEHC 15003 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E339 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

TARASISCIOUS NJOGU KAGURU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of cheating contrary to section 315 of the Penal code. The particulars of the offence are that on the 16th and 17th day of May, 2023 at Hawaii estate in Ainabkoi Sub-county within Uasin Gishu County by means of fraudulent trick induced Caleb Kumutai Rotich to pay a sum of Kshs. 250,000/= by pretending that he was in a position to transport a Hyundai Excavator from Isiolo town to Chemilil town, a fact he knew to be false.
2. The applicant pleaded not guilty to the offence and the matter proceeded to full trial and the applicant was found guilty and sentence to pay a fine of Kshs. 50,000/= in default 1-year imprisonment.
3. The applicant has approached this court seeking a sentence review based on the probation report filed on 22nd November, 2024. According to the report, the applicant is a 48- year old who is married to Lilian Okumu with 4 children who are still schooling. That before his arrest, he was a truck driver delivering goods to various places within the country. The report further indicated that during his time in prison, the applicant did not receive any specialized skills. However, he has been working at the prison farm where he has been taking up general duties.
4. As to his attitude towards non-custodial measures, it is reported that he is remorseful and pleads for mercy from the honorable court. He is willing to serve non-custodial sentence. He takes non-custodial sentence positively, indicating that it will enable him reunite with his family and also continue his life as well as endeavor to gain meaningful employment to enhance his support to his extended family.



5. The Probation officer recommended that considering his attitude to the non-custodial measures, he could be placed on a community service order for a period of 4 months at Muridogo Chief's office.
6. 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.
7. The *Community Service Orders Act* allows the 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.
8. I also 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.
9. The applicant has shown remorse and served a substantial part of his sentence. As indicated by the trial Learned Magistrate, there have been attempts to have the victim compensated of what was lost. In my considered view, the objectives of sentencing are meant to address some of such cases.
10. This court is clothed with wide powers under article 165 (6) and (7) of *the Constitution* and section 362 as read with section 364 of the CPC to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
 - a. Youth of the applicant



- b. Immaturity of the applicant
 - c. The previous good character of the applicant
 - d. Restitution of part of the stolen property to the complainant
 - e. A plea of guilty entered by the applicant
 - f. Cooperation with the police by the applicant after the commission of the offence
 - g. Expression of remorse by the applicant before the trial court
11. Consequently, the effective measure is to have the applicant serve a community service order for the remaining period at Muridogo Chief's Office. 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 ELDORET THIS 29TH DAY OF NOVEMBER 2024.

.....

R. NYAKUNDI

JUDGE

