



**Were v Republic (Criminal Revision E400 of 2024)
[2024] KEHC 15010 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E400 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

PATRICK WERE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing contrary to section 268 as read with Section 275 of the Penal Code.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to 12 months' imprisonment.
3. The applicant is before 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 relying on the sentence review report on record. The report is positive. The report concluded that the applicant has completed nearly half of his sentence in prison. That he comes from a humble home background. He is a young person in formative stages of his life and he is not beyond redemption. He can be given a chance. The probation officer recommended that the applicant be considered to serve Community Service Order (CSO) for the remaining period of four months at Baharini Police Station.
5. This court in deciding on whether to impose a non-custodial sentence or not, is required to consider the following factors: Gravity of the offence, criminal history of the offender, character of the offender, protection of the community, offender's responsibility to third parties.



- 6. In addition, 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.
- 7. Having considered the facts of the case, I am of the considered view that the facts as presented in the present case are a perfect fit for a non-custodial sentence considering that the offender is also young. The circumstances of the offence in my view are those that call for a victim-offender mediation. I believe that the time the applicant has spent in custody has shaped his character and it is only proper that he is 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. In the upshot, upon consideration of the circumstances, this Court hereby orders that the applicant shall serve the remaining period through a community service order at Baharini Police Station. The supervisor shall submit monthly progress reports to this Court through the probation officer to monitor the effectiveness of the sentence. The applicant is hereby notified that any breach of the conditions attached to this order shall result in its revocation and reinstatement of custodial sentence.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF NOVEMBER, 2024.

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R. NYAKUNDI
JUDGE

