



**Kiptoo v Republic (Criminal Revision E261 of 2024)  
[2024] KEHC 15011 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15011 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E261 OF 2024  
RN NYAKUNDI, J  
NOVEMBER 29, 2024**

**BETWEEN**

**HILLARY KIPTOO ..... 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. The particulars of the offence are that on 30<sup>th</sup> January, 2024 at Saroyot village in Kesses sub-county within Uasin Gishu County, one gear lever box and five arrow disc plates all valued at Kshs. 45,000/=, the property of Christopher Kipkering.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 12 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 review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court.
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.
  - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. A review of the record shows circumstances that would have been a perfect fit for victim-offender mediation. I believe that for the time spent in custody, the applicant has appreciated the seriousness of the offence. From the above analysis, I am of the considered opinion that the period served in custody by the applicant is sufficient when considering the objectives of sentencing in totality. The sentence is hereby reviewed to the period already served. The applicant is therefore at liberty unless and otherwise lawfully held.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 29<sup>TH</sup> DAY OF NOVEMBER 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

