



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Republic (Criminal Appeal E038 of 2021)  
[2023] KEHC 19444 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19444 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPEAL E038 OF 2021  
RE ABURILI, J  
JUNE 27, 2023**

**BETWEEN**

**AUGUSTINE FELIX OTIENO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from the original conviction and sentence in Nyando  
Senior Principal Magistrate's Court Criminal Case No. E242 of  
2021 delivered on 8th September 2021 by Hon. R. S. Kipngeno (PM))*

**RULING**

1. The Appellant was convicted and sentenced to serve one (1) year in prison. However, the trial court granted him bond on the same terms as the bond pending appeal. He later filed this appeal which was heard and dismissed on November 22, 2022.
2. The lower court file is still here in the High Court hence there was no way of knowing if the Appellant was later arrested and committed to prison.
3. The Appellant was arrested and brought to this court after the surety was summoned to avail the appellant. He submits that the lower court, upon learning of the dismissal of the appeal had him arrested and committed to jail for the one (1) year prison term on a skeleton file.
4. This information was not within the knowledge of this court and the prosecutor. The prosecution have verified the information from prison and confirmed that indeed the Appellant has served sentence although he was pardoned before completing the term via Presidential pardon on June 11, 2023.
5. For the above reasons and as the Appellant has served his term in prison, he is hereby discharged.
6. Therefore, unless otherwise lawfully held, the Appellant Augustine Felix Otieno is hereby set at liberty forthwith.



7. This file is now closed and the lower court file shall forthwith be returned to Nyando Law Courts together with a copy of Judgment of this court rendered on November 22, 2022 and this Ruling.
8. File closed.
9. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF JUNE, 2023**

**R. E. ABURILI**

**JUDGE**

