



**Otieno v Republic (Criminal Revision E008 of 2022)
[2022] KEHC 12802 (KLR) (8 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E008 OF 2022
RE ABURILI, J
AUGUST 8, 2022**

BETWEEN

ERICK OMONDI OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for revision of sentence, arising from conviction and sentence in Siaya Chief Magistrates' Court in Criminal Case No. E102 of 2022 delivered on 5/4/2022 by Hon. M.O. Wambani, Chief Magistrate)

RULING

1. This is a prison decongestion matter. The convict is Erick Omondi Otieno. He was convicted for the offence of stealing by servant contrary to Section 281 of the *Penal Code* and sentenced to serve one (1) year imprisonment with an alternative of a fine of Kshs. 48,000/=. The value of the stolen property was Kshs. 178,000/= in cash received by virtue of his employment with SAMCO Traders Ltd Siaya. The convict pleaded guilty to the charge hence he was convicted and sentenced on an unequivocal Plea of guilty and after the trial court considered the Probation Officer's report which showed that he was remorseful and a first offender.
2. The complainant recovered Kshs. 130,000/= and only wanted the balance sum of money Kshs. 48,000/= which the trial court fined the convict and ordered that he pays to the complainant in default, to serve one-year imprisonment.
3. The Probation Officer has visited and spoken to the convict who is said to be remorseful but that the complainant is unwilling to forgive him as the Kshs. 48,000/= has not been repaid back. Non-custodial is not recommended in view of the above.
4. I have considered all the above circumstances as described by the Probation Officer. I note that the convict was given a short lenient prison term which he is almost completing.



5. The order for payment of Kshs. 48,000/= to the complainant still stands even after he has served the prison term. The complainant can institute legal proceedings before the small claims court to recover the said sum, summarily. In addition, the convict can only raise the sums due if he is given an opportunity to work and raise the said sums of money.
6. For the above reasons, considering that the convict admitted the charge and is remorseful, and that part of the stolen money was recovered, I hereby order that in the spirit of prison decongestion, the convict Eric Omondi Otieno who is aged 22 years old shall be released from prison to serve community service at the Chief's Office, West Kwabwayi Location for the remainder prison term and to be supervised by the Area Chief and Probation Officer, Homabay County.
7. I so order.
8. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 8TH DAY OF AUGUST, 2022

R.E. ABURILI

JUDGE

