



REPUBLIC OF KENYA



KENYA LAW
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**Maseria v Republic (Criminal Revision E004 of 2022)
[2022] KEHC 10981 (KLR) (3 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 10981 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E004 OF 2022**

**JN KAMAU, J
AUGUST 3, 2022**

BETWEEN

JAMES KEBASU MASERIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with house breaking contrary to Section 304(1) and stealing contrary to Section 279(b) of the *Penal Code* Cap 63 (Laws of Kenya). On 8/6/2021, he was fined Ksh. 25,000/- or in default to serve two (2) years imprisonment. The report by Edwin Kimaiyo Probation/Community Service Officer recommends that he serve a non-custodial sentence under community service order at Ekerenyo Police Station for a period of two (2) months. Section 28(2) of the *Penal Code* provides that for a fine exceeding Ksh15,000/- but not exceeding Ksh50,000/-, the default imprisonment is six (6) months. The imprisonment of two (2) years was clearly illegal, unlawful and without arm, legal basis. The applicant has since completed his sentence and it is hereby directed that he be released from custody forthwith unless he be held for any other lawful cause. Orders accordingly.

DATED AND DELIVERED AT NYAMIRA ON THIS 3RD AUGUST 2022

J. KAMAU

JUDGE

