



**Ochieng v Republic (Criminal Revision E029 of 2022)
[2022] KEHC 10965 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 10965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E029 OF 2022**

**JN KAMAU, J
AUGUST 2, 2022**

BETWEEN

VITALIS GILBERT OCHIENG ALIAS ODIPO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with stealing contrary to Section 268 as read with Section 275 of the [Penal Code](#) Cap 63 (Laws of Kenya). He was also charged with the alternative charge of handling stolen goods contrary to Section 322 92) (1) of the Penal Code. He was fined Kshs. 20,000/- and in default one (1) year imprisonment on 11/2/2022. The Report of Eglise Sintiyon Probation/Community Service order that was filed on 29/7/2022 did not recommend a non-custodial sentence as the Applicant had thievery tendencies and he himself had years of life upon his release. The Prison early release date is 11/10/2022. The same was based on an unlawful, illegal and a sentence with no legal basis. Section 28 (2) of the Penal Code provides that for a fine exceeding Kshs. 15,000/- but not exceeding Kshs. 50,000/-, the default imprisonment is six (6) months. Taking remission into consideration, the sentence would have been four (4) years. He has spent five (5) months and twenty one (21) days in prison. As he has already completed his sentence, it is hereby directed that the Applicant be released from custody forthwith unless he be held for any other lawful cause. Orders accordingly.

DATED AND DELIVERED AT BUSIA ON THIS 2ND DAY OF AUGUST 2022.

**J. KAMAU
JUDGE**

