



**Ooko v Republic (Criminal Revision E048 of 2022)
[2022] KEHC 10947 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 10947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E048 OF 2022**

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

BETWEEN

ALBERT OCHIENG OOKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with stealing contrary to section 275 of the *Penal Code* cap 63 (Laws of Kenya). He was convicted and fined ksh.50,000/= or in default to serve two (2) years imprisonment on 8/3/2022. His early date of release as per Prison is 10/6/2022. He has spent five (5) months twenty nine (29) days in prison. The Report of Dennis Kiptanui Probation Officer dated 25/7/2022 does not recommend the release on a non-custodial sentence due to his safety as he was almost killed when the offence occurred and the Community is still very hostile. According to section 28 (2) of the *Penal Code*, a fine exceeding ksh.15,000/= but not exceeding ksh.50,000/= attracts a default imprisonment of one (1) year. The default sentence of two (2) years that was imposed by the Learned Trial Magistrate was unlawful, illegal and without legal basis. The applicant ought to complete his sentence on 2/8/2022 having taken into account the period from the date was arrested and the date he was sentenced in line with section 333 (2) of the *Criminal Procedure Code* cap 75 (Laws of Kenya). It is hereby directed that the applicant completes his sentence up to 12/8/2022 in custody.

Orders accordingly.

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

J. KAMAU

JUDGE

