



REPUBLIC OF KENYA



**Otieno v Republic (Criminal Revision E053 of 2022)
[2022] KEHC 12267 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E053 OF 2022
JN KAMAU, J
AUGUST 2, 2022
ORIGINALLY CR CASE NO E2901 OF 2021**

BETWEEN

KENNEDY OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of stealing contrary to Section 268 as read with Section 275 of the *Penal Code* Cap 63 (Laws of Kenya). He was arrested on November 17, 2011 and arraigned in Court on November 19, 2021 when he admitted the charge. He was fined Kshs. 20,000/- and in default to serve one (1) year imprisonment on 2/12/2021. The Report of Eglina Sintiyon Probation/Community Service Officer that was filed on 29/7/2022 did not recommend the release of the Applicant to serve non-custodial sentence on account of the fact that he had spent a relatively short time in prison, that the Chief was not receptive to him, the latter was opposed to a non-custodial sentence and that he was likely to return to his gang members. Notably, Section 28 (2) of the *Penal Code* provides that where the fine exceeds Kshs. 15,000/- but does not exceed the sum of Kshs. 50,000/-, the default sentence is six (6) months imprisonment. Taking remission and the number of days from the date of arrest and date of sentence into account the Applicant should have completed his sentence 19/3/2022. He has so far spent seven (7) months sixteen (16) days in prison on account of a sentence that was unlawful, illegal and which had no legal basis. As the Applicant has since completed his term, it is hereby directed that he be released 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

