



**Simiyu v Republic (Criminal Revision E063 of 2022)
[2022] KEHC 10870 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 10870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E063 OF 2022
JN KAMAU, J
AUGUST 2, 2022
ORIGINALLY CR. CASE NO E341 OF 2022**

BETWEEN

KEVIN SIMIYU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of Stealing Stock contrary to Section 278 of the [Penal Code Cap 63](#) (Laws of Kenya). He was also charged with the alternative charge of handling stolen stock contrary to Section 322 (2) of the Penal Code. He pleaded guilty to the charge. There was no indication if he was convicted as those proceedings were not in the file. However, he was fined ksh.20,000/= and in default to serve one (1) year imprisonment on 8/5/2022. According to the Report of Ezekiel Wesonga Probation/Community Service Officer, did not recommend the release of the Applicant on a non-custodial sentence for the reason that his family was not well known in the area. Section 28 (2) of the Penal Code provides that where the fine exceeds ksh.15,000/= but does not exceed ksh.50,000/= the default imprisonment is six (6) months. The default sentence of one (1) year imprisonment that was imposed by the Learned Trial Magistrate was unlawful, illegal and had no legal basis. Taking into account the remission of the sentence of six (6) months, the Applicant's sentence is ending in September 2022 and not the early date of release given by the Prisons on 18/1/2023 which was based on the illegal sentence of one (1) year imprisonment. As he did not disclose information about his family or place abode, this court was not persuaded that it should review his sentence. It is hereby directed that the Applicant serves the remainder of his sentence noting to take into account the days between his date of arrest and date of sentencing in line with Section 333 (2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya). Orders accordingly.

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



J. KAMAU
JUDGE

