



**Wafula v Republic (Criminal Revision E069 of 2022)  
[2022] KEHC 12329 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12329 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL REVISION E069 OF 2022**

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

**BETWEEN**

**EMMANUEL WAFULA ..... 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 offence of handling stolen property contrary to section 322 (1) (2) of the [Penal Code](#). He was fined Kshs 20,000/- and in default to serve one (1) year imprisonment on 15/2/2022 having been first arraigned in court on 1/2/2020. The report of Fredrick Otieno the probation/community service officer that was filed on 29/7/2022 did not recommend the release of the applicant on a non-custodial sentence as members of the community still perceived him negatively. The court noted that the default imprisonment where the fine exceeds Kshs 20,000/- but does not exceed Kshs 50,000/- is six (6) months as provided in section 28 (2) of the [Penal Code](#). The applicant's sentence was therefore ending on 15/6/2022. Taking account of section 333 (2) of the [Criminal Procedure Code](#) cap 75 (Laws of Kenya) that taken into account the period from date to arrest until the date of sentence when computing the prison term, the applicant ought to have been released on 7/6/2022 and not the early date by prison of October 15, 2022. Accordingly, as the applicant had already completed his sentence, the sentence of one (1) year having been unlawful, illegal and without legal basis, 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 2<sup>ND</sup> DAY OF AUGUST 2022.**

**J. KAMAU**

**JUDGE**

