



**Koga v Republic (Criminal Revision E082 of 2022)
[2022] KEHC 12379 (KLR) (1 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E082 OF 2022
JN KAMAU, J
AUGUST 1, 2022**

BETWEEN

DANIEL KOGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with two (2) counts of the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code* cap 63 (Laws of Kenya). He pleaded not guilty to the charge and the trial proceeded. He was convicted of the two (2) counts of offence on February 9, 2022. He was convicted on count I and discharged on count II and find ksh 20,000/= or in default to serve one (1) year imprisonment in default. The court has noted that the earliest released date by the prison is October 9, 2022. He has so far served four (4) months in prison. According to the report by Dennis Kiptanui, Probation Officer dated July 25, 2022, it is recommended that the applicant serve the remainder of the sentence under the Community Service Order at Magombe Chief's Office. This court finds that there was a disconnect between the conviction and the sentence that was imposed on the applicant. Whereas the learned trial magistrate convicted him on both counts at the time of sentencing, the learned trial magistrate convicted him count 7 and discharged him under count II and imposed the aforesaid fine and default imprisonment term. The propriety and sentence were incorrect and the court hereby finds the same to have been illegal and having no basis in law. In addition, the sentence of one (1) year imprisonment was also unlawful and clearly illegal. Section 28 (2) of the *Penal Code* provides that a fine exceeding ksh 15,000/= but not exceeding ksh 50,000/= attracts a default imprisonment of six (6) months. Taking into consideration the remission of the applicant's sentence which is four (4) months and he has since served four (4) months in prison, he has already completed his sentence. It is hereby directed that the applicant be and is hereby released from custody forthwith unless he be held for any other lawful cause. Orders accordingly.

DATED AND DELIVERED AT BUSIA ON THIS 1ST DAY OF AUGUST 2022.



J. KAMAU
JUDGE

