



**Mark v Republic (Criminal Revision E031 of 2022)  
[2022] KEHC 11053 (KLR) (1 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11053 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL REVISION E031 OF 2022  
JN KAMAU, J  
AUGUST 1, 2022  
ORIGINALLY CR. CASE NO E382 OF 2022**

**BETWEEN**

**LAWRENCE ONYANGO MARK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of stealing contrary to Section 275 of the *Penal Code* Cap 63 (Laws of Kenya). He was convicted and fined Kshs. 30,000/- and in default to serve one (1) year imprisonment. Section 28 (2) of the *Penal Code* provides that where a fine exceeds Kshs. 15,000/- but does not exceed Kshs. 50,000/-, the default Judgment is six (6) months imprisonment. Taking into account the remission of the sentence, the Applicant’s sentence ought to run 11/9/2022 and not 7/12/2022 which release date was based on the default imprisonment which was unlawful, illegal and had no legal basis. Having noted the Report by Erisomo G. Oduya Probation Officer that was dated 27/7/2022, that the Applicant is a foreigner, I do not find him suitable for community service order. Accordingly, I hereby direct that he serves the remaining period of his sentence until 11/9/2022 in custody.

Orders accordingly.

**DATED AND DELIVERED AT BUSIA ON THIS 1<sup>ST</sup> DAY OF AUGUST 2022.**

**J. KAMAU**

**JUDGE**

