



**Oteba v Republic (Criminal Revision E057 of 2022)
[2022] KEHC 10974 (KLR) (1 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 10974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E057 OF 2022**

**JN KAMAU, J
AUGUST 1, 2022**

BETWEEN

PAUL OTEBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code* cap 63 (Laws of Kenya). He was arrested on 16/12/2021. He pleaded guilty to the charge and was fined ksh.20,000/= or one (1) year in default on 20/12/2022. The Report for sentence Review by Joyce Ochieng Odhiambo, Probation Community Officer filed in court on 29/7/2022 recommends that the applicant is suitable to serve Community Service Orders at Angurai Primary School. His earliest release period indicated by the Prisons is 20/12/2021. The court takes the view that the default sentence that was imposed by the trial court was illegal and unlawful. According to section 28 (2) of the *Penal Code* provides that the default sentence of a fine exceeding kshs.15,000/= but not exceeding kshs.50,000/= shall be six (6) months imprisonment. As the applicant 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 other lawful cause. Orders accordingly.

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

J. KAMAU

JUDGE

