



REPUBLIC OF KENYA



KENYA LAW
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**Owino v Republic (Criminal Revision E077 of 2022)
[2022] KEHC 11052 (KLR) (1 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E077 OF 2022
JN KAMAU, J
AUGUST 1, 2022
ORIGINALLY CR. CASE NO E066 OF 2022**

BETWEEN

ABUBAKAR OWINO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of stealing contrary to Section 268 as read with Section 275 of the *Penal Code* Cap 63 (Laws of Kenya). He had also been charged with an alternative charge of handling stolen property contrary to Section 322 (1) (2) of the Penal Code. He was arrested on 15/1/2022 and arraigned in Court where he denied the charges. He admitted to the facts on 1/3/2022 and was fined Kshs. 20,000/- or in default to serve one (1) year imprisonment on 15/3/2022. The sentence was to run from the date of arrest. He has so far served four and a half (4 ½) months in prison. According to the Report of Abdirashid Osman Probation/Community Service Officer field on 29/7/2022, it has not recommended the release of the Applicant because he is a foreigner. Notably, Section 28 (2) of the Penal Code provides that where a fine exceeds Kshs. 15,000/- but does not exceed Kshs. 50,000/- default sentence in prison is six (6) months. The sentence of one (1) year imprisonment was therefore unlawful, had no legal basis in law and was illegal. Taking into account the remission of six (6) months imprisonment the Applicant ought to have served four (4) months in prison. As he has already served four and a half (4 ½) months, he has already completed his sentence. It is hereby directed that he be 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

