



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO. 19 OF 2017

JANSON MALAKHA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

9. The sentence imposed cannot be termed as harsh in view of the maximum provided by the law. However, the learned trial magistrate having opted to fine the appellant, she ought to have complied with the provisions of section 28 (2) of the Penal Code which provides the maximum default sentence where a fine has been imposed. It states as follows:

In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

Amount	Maximum
Not exceeding Sh.500	14 days
Exceeding Sh.500 but not exceeding Sh.2,500	1 month
Exceeding Sh.2,500 but not exceeding Sh.15,000	3 months
Exceeding Sh.15,000 but not exceeding Sh. 50, 000	6 months
Exceeding Sh.50,000	12 months

From this scale, the accused ought to have been given a default sentence of 12 months imprisonment. I therefore substitute the default sentence to 12 months imprisonment as provided for by the law. The appeal succeeds to this extent only.

DELIVERED and SIGNED at BUSIA this 19th day of April, 2018

KIARIE WAWERU KIARIE

JUDGE