



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA.**

**MISC. CRIMINAL REVISION NO. 289 OF 2015.**

**MOSES ODUORI WERE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being a Revision from the order of Butere Principal Magistrate's Court Criminal Case No.129 of 2012 by Hon. L.N. Kiniale , Resident Magistrate on 15<sup>th</sup> August, 2012.)*

**RULING ON REVISION**

1. The applicant herein was charged with the offence of stealing stock contrary to section 278 of the Penal Code. After a full hearing, he was sentenced to serve seven (7) years imprisonment with effect from 15<sup>th</sup> August, 2012.
2. Section 364 (5) of the Criminal Procedure code provides that:-

***“When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”***

3. I must point out that an accused person who has been sentenced to serve 7 years imprisonment has the option of filing an appeal. The applicant in this case seems not to have done so. I am also alive to the provisions of section 3 (1) of the Community Service Orders Act which provides instances where an applicant **can** be placed under Community Service Orders in the following words:-

***“Where any person is convicted of an offence punishable with -***

- a. ***Imprisonment for a term not exceeding three years, with or without the option of a fine; or***
  - b. ***Imprisonment for a term exceeding three years but which the court determines a term of imprisonment for three years or less, with or without the option of a fine, to be appropriate.”***
4. The probation report on record is unfavourable to the applicant, even if it was favourable, I am of the considered view that the offence of stealing stock does not fall in the purview of offences that befit the placement of a person who has been charged and convicted of the said offence under Community Service.

**DELIVERED, DATED and SIGNED at KAKAMEGA on this 30th day of May, 2016.**

**NJOKI MWANGI**

**JUDGE**