



**REPUBLIC OF KENYA**

**High Court at Embu**

**Criminal Revision 442 of 2012**

**JOHN LAWRENCE KIMATHI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON BAIL & REVIEW**

The applicant herein was charged with the offence of Stealing contrary to Section 275 of the Penal Code. He admitted the charge and facts and was convicted. Subsequently he was placed on probation for two years. This was on 12/10/2010. On 28/6/2012 the Probation Officer applied for applied for warrant of arrest against the applicant.

And on 6/11/2012 the applicant was arraigned in Court. Its not clear from where he was arrested. As has been pointed out by counsel, when the applicant was placed on probation there is nothing on record to show that the terms and conditions were explained to him by the Court. I have decided to deal with the issue of Revision straight away as this is a very straight forward case.

The value of the stolen items is less than ks.5000/=. The offence is a misdemeanor. Even in failing to report for Probation the learned trial Magistrate could have given him an option of a fine. He did not.

Because of the anomalies I have raised above I find that this is a fit case for review. I set aside the sentence of 17 months imprisonment. He is discharged under section 35(2) of the Penal Code on condition that he does not commit any offence within the next 6 months.

The incharge G.K. Prison Embu to explain this to him before his release as this Court will not be sitting tomorrow.

**DATED AND DELIVERED AT EMBU THIS 8<sup>TH</sup> DAY OF NOVEMBER 2012.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of;**

**Mr. Momanyi for Applicant**

**Mr. Omayo for State**

**Njue CC**