

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
REVISION CASE 263 OF 2010
VINCENT ODUORI ONDUKUACCUSED**

VERSUS

REPUBLICPROSECUTOR

REVISION

The accused pleaded guilty and was convicted of the offence of stealing contrary to Section 275 of the Penal Code, (*Cap 63, Laws of Kenya*). The accused was sentenced to a fine of Kshs.6,000/- or in default to six (6) months imprisonment.

The punishment for offence of stealing contrary to Section 275 of the Penal Code is three (3) years, and there is no provision for a fine.

The learned Chief Magistrate noticed this error and in exercise of its power under Section 363 of the Criminal Procedure Code called for the record, and forwarded the same to this court for Revision.

I have looked at the record of proceedings in lower court. I have also considered the provisions of Section 275 of the Penal Code in relation to Section 28 of the Penal Code under which the learned Resident Magistrate purported to sentence the accused. I am satisfied that the learned trial magistrate acted in error by sentencing the accused to a fine of Kshs.6,000/- or in default to six (6) months imprisonment.

The learned trial Magistrate acted in error, **firstly** by purporting to act under the provisions of Section 28 of the Penal Code - which only apply in the situations prescribed thereunder - where the law provides for the exercise of the court's discretion to impose a fine and in default a term of imprisonment, or to both such fine and imprisonment. Section 275 (which relates to a charge of stealing) prescribes the punishment for a fine. The sentence imposed by the learned trial magistrate is therefore null and void in law.

In exercise of the discretion conferred up this court by the provisions of Section 364(1)(b) and 364(2) - proviso, the said sentence, is hereby set aside, and in lieu thereof, the accused sentenced to 2 years imprisonment, to run from the date of his conviction.

There shall be orders accordingly.

Dated, signed and delivered this 27th day of July 2010

M. J. ANYARA EMUKULE

JUDGE