



**Ngachi v Republic (Criminal Revision 89 of 2024)
[2024] KEHC 3338 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 89 OF 2024**

DR KAVEDZA, J

APRIL 4, 2024

BETWEEN

ALLAN NGACHI ALIAS SAM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted on his own plea of guilty for the offence of stealing contrary to section 268 (1) as read with section 275 of the Penal Code. He was sentenced to pay a fine of Kshs. 30,000/= and in default to serve two (2) years imprisonment.
2. Under Section 275 of the Penal Code, any person convicted for the offence of stealing is liable to imprisonment for 3 years. In the present case though, the trial court opted to impose fines. In that case, the learned trial magistrate ought to have imposed the default sentences pursuant to Section 28(2) of the Penal Code. Under the provision, where the fine imposed exceeds Ksh. 15,000 but does not exceed Sh.50,000, the default sentence should not exceed 6 months.
3. It follows then that the sentence imposed was illegal, which represents an irregularity.
4. The sentence imposed by the trial court is therefore set aside and substituted with a fine of Kshs. 30,000/=, in default to serve six (6) months imprisonment.

Orders accordingly.

RULING DELIVERED THIS DAY 4TH DAY OF APRIL 2024.

D. KAVEDZA

JUDGE

