



**BAM v Republic (Criminal Revision E132 of 2024)  
[2024] KEHC 10620 (KLR) (10 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10620 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL REVISION E132 OF 2024  
RE ABURILI, J  
SEPTEMBER 10, 2024**

**BETWEEN**

**BAM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Winam Senior  
Principal Magistrate's Court Criminal Case No. E207 of 2024)*

**RULING**

1. On 30<sup>th</sup> July 2024, the convict BAM was sentenced to pay cumulative fines of Kshs.15,000 in default to serve one (1) year imprisonment on two counts of stealing contrary to Section 268 of the [Penal Code](#) and creating disturbance in a manner likely to cause breach of the peace.
2. The sentences of one (1) year and 90 days respectively were to run concurrently.
3. This was *vide* Winam SPM Criminal Case No. E207 of 2024. The convict is serving prison term because she is unable to raise the fines.
4. From the presentence report dated 29<sup>th</sup> July 2024, the convict is a 27 years old single lady. She was found to be mentally unstable although no mental assessment report was ordered on her. She is a first offender. She lived in Kisumu but her home is in Homabay. She was orphaned and suffered from financial distress and hardship, fending for her siblings.
5. In view of the revelation that the convict was mentally unstable, it was the duty of the trial court to order for mental assessment report to establish whether the offences were committed involuntarily or voluntarily.
6. I do not have a conclusive mental assessment report on the convict, either. The sentence imposed is short and the offender is a first offender.



7. She has already served over 1<sup>1</sup>/<sub>2</sub> months in prison.
8. I hereby suspend the remainder of the prison term for one year in view of the unassessed mental status of the convict and in the spirit of prison decongestion, order that unless otherwise lawfully held, the convict Brucky Achieng Magak shall forthwith be released from prison.
9. Signal to issue.
10. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

