



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Republic v Sawe (Criminal Revision E172 of 2024)  
[2025] KEHC 7438 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7438 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E172 OF 2024**

**JK SERGON, J**

**MAY 27, 2025**

**ORIGINALLY CRIMINAL CASE NO. E422 OF 2024 AT KERICHO**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RAMA KIPKEMOI SAWE ..... APPLICANT**

**RULING**

1. The file relating to Kericho C.M.C.CR.C No.E.422 of 2024 Republic -vs- Rama Kipkemoi Sawe was placed before this Court for perusal and examination by the Deputy Registrar of this Court pursuant to the provisions of Sections 362 and 364 of the [Criminal Procedure Code](#).
2. Under aforesaid provisions, this Court required to examine any Criminal Proceedings before any Subordinate Court for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such Subordinate Court.
3. Upon perusal of the record, it is apparent that one Rama Kipkemoi Sawe, the Applicant herein pleaded guilty to a charge of Store Breaking Contrary to Section 306 (a) and Stealing Contrary to Section 279 (b) of the [Penal Code](#).
4. The Applicant was subsequently convicted and sentenced to pay a fine of Kshs.100,000/= in default to serve one (1) year imprisonment. It would appear the applicant is currently serving the default sentence having failed to raise the amount of fine.
5. The offence under Section 279(b) attracts a maximum sentence of 14 years while the offence under Section 306 (b) attracts a maximum sentence of 7 years.



6. The Trial Court gave the Applicant an option of a fine of Kshs.100,000/=. Under Section 28 (2) of the Penal Code, the maximum default sentence for a fine exceeding Kshs.50,000/= is twelve(12) months imprisonment.
7. The Trial Magistrate pronounced a maximum default sentence of 12 months. The record shows that the applicant readily pleaded guilty and is a first offender. In the circumstances, the Trial Court should not have meted out a maximum default sentence.
8. This Court is of the view that the appropriate default sentence should be seven (7) months imprisonment. It is therefore clear that this Court is entitled to interfere with the order on default sentence in exercise of its supervisory power of revision.
9. Consequently, the default sentence is hereby set aside and it is substituted with an order directing that the default sentence be seven (7) months. The default sentence to run from the date of sentence i.e. from 3<sup>rd</sup> October, 2024. The applicant has so far served 8 months in prison out of the 12 months of the default sentence pronounced by the Trial Magistrate.
10. It is clear that the Applicant has therefore served the new default sentence of seven (7) months in full. The Applicant namely: Rama Kipkemoi Sawe should be set free from custody unless lawfully held.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 27<sup>TH</sup> DAY OF MAY 2025**

.....

**J.K. SERGON**

**JUDGE**

