



REPUBLIC OF KENYA



**Okello v Republic (Criminal Revision 93 of 2023)  
[2024] KEHC 1945 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1945 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 93 OF 2023  
DR KAVEDZA, J  
FEBRUARY 28, 2024**

**BETWEEN**

**STANLEY OCHIENG OKELLO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed a notice of motion dated 30<sup>th</sup> November 2023 supported by the affidavit sworn by the applicant. He prayed that the sentence imposed be reviewed.
2. From the record, the applicant was charged and convicted for the offence of stealing contrary to section 268 (1) of the *Penal Code*. He was sentenced to pay a fine of Ksh. 200,000 in default to serve 2 years imprisonment.
3. I have considered the application. 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 Kshs. 50,000/= the default sentence must not exceed 12 months imprisonment. It follows then that the sentences imposed was illegal which represents an irregularity on the sentences.
4. In the end, the sentence of a fine of Kshs. 200,000 in default to serve 2 years imprisonment is substituted with a fine of Kshs. 200,000 in default to serve 1-year imprisonment.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF FEBRUARY 2024.**

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**D. KAVEDZA**



**JUDGE**

