



REPUBLIC OF KENYA



**Mwangi v Republic (Revision Case E094 of 2024)  
[2024] KEHC 3344 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3344 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
REVISION CASE E094 OF 2024  
HM NYAGA, J  
MARCH 22, 2024**

**BETWEEN**

**SAMWEL MUYA MWANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This file has been brought up for revision in order to decongest the Nakuru GK Prison.
2. The Applicant was charged with the offence of:  
Stealing Contrary to Section 268 as read with Section 275 of the *Penal Code*.
3. The accused pleaded guilty and on 7<sup>th</sup> December, 2023, he was convicted and sentenced to a fine of Kshs. 10,000/= and in default he was to serve one (1) year imprisonment.
4. Section 28(2) of the *Penal Code* provides as follows;

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- (2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the *Detention Camps Act* (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

5. In imposing a fine of Kshs. 10,000/= the maximum sentence in default thereof should have been three (3) months.



6. Therefore, the sentence imposed by the trial court was improper and is set aside and raised to a fine of Kshs. 10,000/= in default to serve three (3) months imprisonment.
7. The Applicant was convicted on 7<sup>th</sup> December, 2023, he has already served the maximum sentence in default of the fine imposed upon him.
8. Consequently, I direct that the Applicant be released from prison custody forthwith be set at liberty unless he is lawfully held.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 22<sup>ND</sup> DAY OF MARCH, 2024.**

**H. M. NYAGA**

**JUDGE**

**In the presence of;**

C/A Oleperon

N/A for state

