



**Otieno v Republic (Miscellaneous Criminal Application
E082 of 2024) [2024] KEHC 10228 (KLR) (19 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E082 OF 2024
RE ABURILI, J
AUGUST 19, 2024**

BETWEEN

ALPHONSE OCHIENG OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Kisumu Criminal Case
No.E121 of 2023 on 25th September, 2023 by Hon. Dr. D.N.Ogoti, C.M)*

RULING

1. The applicant was convicted of the offence of burglary and stealing contrary to Section 304 (b) as read with section 278 of the [Penal Code](#) and sentenced to serve Four years imprisonment on each limb, sentences to run consecutively.
2. He now seeks to be placed on probation. I observe that before sentencing, the trial court called for a presentence report which was filed. The convict was also given the opportunity to mitigate. The probation report revealed that he was a habitual thief and that he had been charged at Winam law Courts for handling stolen property. That he belongs to a gang that terrorizes citizens.
3. The trial court having considered the mitigations and presentencing report, exercised discretion and this court cannot review lawful sentence in the absence of any appeal challenging the sentence.
4. I find the application dated 6th May, 2024 devoid of any merit. It is hereby dismissed.
5. Signal to issue.
6. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF AUGUST, 2024

R.E. ABURILI



JUDGE

