



**Opiyo v Republic (Criminal Application E114 of 2024)
[2024] KEHC 10086 (KLR) (12 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPLICATION E114 OF 2024
RE ABURILI, J
AUGUST 12, 2024**

BETWEEN

NIXON OPIYO APPLICANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Tamu SPM Criminal Case No. 365 of 2023)

RULING

1. The applicant is a convict for the offence of stealing contrary to section 268 of the penal Code and was sentenced to serve two years imprisonment on 13/5/2024. He claims that he was arrested on 9/12/2023 and that despite the court ordering that the six months spent in remand be taken into account, the prisons had refused to compute the sentence as ordered.
2. If that were to be the case, nothing prevented the applicant convict from annexing the warrant of commitment to prison for this court to establish if indeed there is such an order. Convicted persons who seek discretion of the court must avail to court material which supports their claim.
3. I find no substance in the claim as the applicant could also have annexed court proceedings to that effect for the court to confirm that he was in custody during the trial.
4. The application dated 5//7/2024 is dismissed.
5. Signal to issue.
6. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF AUGUST, 2024

R.E. ABURILI



JUDGE

