



**Onyango v Republic (Miscellaneous Criminal Application  
E126 of 2022) [2023] KEHC 2974 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2974 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E126 OF 2022**

**RE ABURILI, J  
MARCH 27, 2023**

**BETWEEN**

**ELPHAS KENGO ONYANGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The convict/applicant herein Elphas Kengo Onyango was sentenced to death for the offence of robbery with violence and rape by Maseno Senior Principal Magistrate's court. He claims that his appeals to this court *vide* HCCRA No 96 of 2004 and to the Court of Appeal *vide* Court of Appeal criminal appeal No 99 of 2007 were all dismissed and later death sentence was commuted to life imprisonment.
2. That *vide* Kisumu High Court petition No 7 of 2018, he was sentenced to serve thirty (30) years imprisonment.
3. He now prays that the seven (7) months and four (4) days spent in custody be taken into account, from his arrest, on November 3, 2003 to June 7, 2004.
4. I have considered the application, the convict already benefited from the least severe sentence through resentencing. However, as he was not on bond during trial, I hereby give him the benefit of section 333(2) of the *Criminal Procedure Code* and order that the thirty (30) years imprisonment reimposed on him shall be calculated from November 3, 2003 when he was arrested.
5. I so order. File closed.

**Dated, Signed and Delivered at Kisumu this 27<sup>th</sup> Day of March, 2023**

**R. E. ABURILI**

**JUDGE**

