



**Ashiundu v Republic (Miscellaneous Criminal Application
E014 of 2021) [2022] KEHC 10271 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2021**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

VICTOR ASHIUNDU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant in this matter seeks a review of sentence under section 333(2) of the *Criminal Procedure Code*, cap 75, Laws of Kenya, and prays to be placed on probation. He would like the time he spent in remand to be reckoned in determining his final sentence.
2. He avers that the trial court had sentenced him to five years imprisonment for simple robbery, contrary to section 295 of the *Penal Code*, cap 63, Laws of Kenya.
3. The applicant has an arguable case. It merits consideration, but I will not be able to exercise discretion under section 333(2) of the *Criminal Procedure Code*, unless I have sight of the trial records, and the appeal records from the High Court and the Court of Appeal.
4. Consequently, I do hereby direct the Deputy Registrar to call for the trial records in Kakamega CMCRC No. 1021 of 2018.
5. The matter shall be mentioned on July 28, 2022. A production order shall issue. Copies of this ruling to be made available to the applicant and the Office of the Director of Public Prosecutions.

DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 24TH DAY OF JUNE, 2022

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.



Victor Ashiundu, the applicant, in person.

Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.

