



REPUBLIC OF KENYA



**Odhiambo v Republic (Miscellaneous Application E092 of 2021)
[2022] KEHC 10304 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E092 OF 2021**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

DAVID OTHIENO ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Motion herein, undated, but filed on December 9, 2021, principally seeks re-sentencing, not on the basis of *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), but through consideration of the period spent in custody, by virtue of section 333(2) of the *Criminal Procedure Code*, cap 75, Laws of Kenya.
2. It would appear that the applicant could have a case which 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 any appeal records from the Court of Appeal.
3. I hereby direct the Deputy Registrar to call for the trial records in Kakamega HCCRC No. 9 of 2008.
4. 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.

David Othieno Odhiambo, the applicant, in person.

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

