



**Ochien’g v Republic (Miscellaneous Criminal Application  
E023 of 2022) [2023] KEHC 3257 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3257 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2022**

**RE ABURILI, J  
APRIL 12, 2023**

**BETWEEN**

**DANCUN OUMA OCHIEN’G ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant is a convict *vide* Nyando Senior Resident Magistrate’s Court criminal case No 1886 of 2005. He was convicted on November 15, 2007 for the offence of robbery with violence contrary to section 296 (2) of the *Penal Code* and sentenced to death.
2. He claims that the death sentence was later reduced to thirty (30) years imprisonment *vide* petition No 14 of 2019 at Kisumu on August 7, 2020.
3. He prays that the thirty (30) years term sentence be calculated from the date of his arrest on December 11, 2005 as he was in custody pending trial.
4. I have considered the application under section 333(2) of the *Criminal Procedure Code*. I am cognisant of and I take judicial notice of the fact that prior to 2010, capital offences such as murder, robbery with violence were not bailable hence once arrested, one had to remain in custody until the end of the trial.
5. There is no contrary evidence in this matter that the convict was in custody pending trial as per the committal warrant of November 15, 2007 where he was sentenced to death in count 1 of the many counts that he faced and he was also given term sentences of three (3) years imprisonment on each of the other 4 counts which sentences were to run consecutively meaning if his death sentence was reduced to thirty (30) years imprisonment, then that sentence being the highest, was to run concurrently with the 3 years imprisonment.



6. However, the said committal warrant shows that the death sentence was commuted to life imprisonment on August 3, 2009.
7. The convict has for over one year never bothered to file into court proceedings or ruling in the criminal petition file wherein he was handed/resentenced. The period allegedly spent in custody if long and one easily take advantage of gap if a blanket order is made.
8. I find this application not supported. It is hereby dismissed.
9. The convict can file a fresh application attaching relevant material for reconsideration.
10. Order to be extracted.
11. This file is closed.

**Dated, Signed and Delivered at Kisumu this 12<sup>th</sup> Day of April, 2023**

**R. E. ABURILI**

**JUDGE**

