



**Ochieng v Republic (Miscellaneous Criminal Application  
E076 of 2022) [2023] KEHC 3155 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3155 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E076 OF 2022**

**RE ABURILI, J**

**APRIL 12, 2023**

**BETWEEN**

**ISAAC HASSAN OCHIENG ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant/convict is Isaac Hassan Ochieng and by his application dated July 7, 2022 filed in court on the same day, he seeks for orders that the eleven (11) months that he spent in custody from September 26, 2019 to August 25, 2020 be considered as part of the sentence served in criminal case number 810 of 2019 at Winam Senior Principal Magistrate's Court.
2. The application is supported by his affidavit sworn on July 7, 2020 wherein he deposes that on August 25, 2020 he was convicted and sentenced to serve six (6) years for the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and that during the trial, he was in custody.
3. I have considered the application which is not supported by any proceedings from the trial court.
4. I observe that most convicts have been lying to this court through these kind of applications even where the court record shows that they were on bond during trial. In other instances, they were resented but they lie to court to exercise discretion twice. To avert such situations, and in serious cases as this one, it is proper that the court is furnished with court proceedings to verify the allegation that convicts were in custody pending trial especially where the period they allege was spent in custody is long as is the case here.
5. In the premises, I find this application not supported. It is hereby dismissed.
6. The convict can file a fresh application accompanied by full proceedings from the trial court.
7. Prisons to be notified by signal.



8. I so order. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 12<sup>TH</sup> DAY OF APRIL, 2023**

**R. E. ABURILI**

**JUDGE**

