



**Ochieng v Republic (Miscellaneous Criminal Application
E016 of 2022) [2023] KEHC 3282 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2022**

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

BETWEEN

ERICK OTIENO OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Miscellaneous Criminal Application was filed on January 25, 2022 by Eric Otieno Ochieng, a Convict in Nyando Senior Principal Magistrate’s Criminal No 600 of 2009, wherein he was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and sentenced to suffer death.
2. He deposes in his affidavit that he appealed to the High Court vid HCRA No 104 of 2010 at Kisumu where his sentence was reduced to twenty (20) years imprisonment.
3. He now seeks that this court considers period already spent in custody before he was sentenced to death. He annexed the warrant of commitment to prison for imprisonment dated 2nd July 2010.
4. Although this court called for the lower court file, for over one year, the same has never been availed from Nyando Law Courts.
5. Nonetheless, the warrant of committal to prison is clear on the offence convicted of and date of conviction and sentence.
6. I however take judicial notice of the fact that before 2010, capital offences such as murder and robbery with violence were not bailable.
7. The applicant herein deposes that he was in custody for eight (8) months prior to his sentence hence the said period be taken into account as part of his sentence in accordance with Section 333(2) of the *Criminal Procedure Code*.



8. I have considered the application filed on January 25, 2022. I am satisfied that the same is merited. I allow it and order that the twenty (20) years imprisonment as reviewed by the High Court vide Kisumu HCRA No 104 of 2010 on November 6, 2012 shall be calculated taking into account the eight (8) months that the convict herein spent in custody prior to being sentenced on July 2, 2010.
9. Order to be extracted and served.
10. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF APRIL, 2023.

R. E. ABURILI

JUDGE

