



**Ochieng v Republic (Miscellaneous Criminal Application
E094 of 2021) [2023] KEHC 3158 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E094 OF 2021**

RE ABURILI, J

APRIL 12, 2023

BETWEEN

KEVIN OCHIENG OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant is Kevin Ochieng Ochieng. He was convicted and sentenced to serve fifteen (15) years imprisonment for the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) vide Kisumu HCR No. 37 of 2013.
2. He seeks for lenient sentence as Section 333(2) of the [Criminal Procedure Code](#) on the period he spent in prison custody was not considered in sentencing him.
3. I have considered the application herein and perused original Kisumu HCR No 37 of 2013. The Applicant was convicted on May 24, 2017 for the offence of Manslaughter contrary to Section 202 of the [Penal Code](#) following a trial for the offence of murder. He was sentenced to serve fifteen (15) years imprisonment.
4. There is no mention of the period spent in custody to be taken into account. However, court proceedings show that on November 26, 2014, the applicant was denied bail pending trial in view of the negative prebail assessment report.
5. The Applicant was arraigned on September 4, 2013 when he took plea. There is no clear date of arrest but from the evidence tendered by the applicant in his defence on May 12, 2017, he was arrested on August 14, 2013.



6. For the above reasons, I find the application merited. I allow it and order that the fifteen (15) years imprisonment imposed on the Applicant/Convict shall be calculated from August 14, 2013 day of arrest.
7. Signal to issue.
8. This file is closed.

Dated, Signed and Delivered at Kisumu this 12th Day of April, 2023

R. E. ABURILI

JUDGE

