



**Ongacho v Republic (Miscellaneous Criminal Application
E085 of 2025) [2025] KEHC 15820 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CRIMINAL APPLICATION E085 OF 2025
MS SHARIFF, J
OCTOBER 21, 2025**

BETWEEN

JOSEPH MUNG'ONYE ONGACHO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Joseph Mung'onye Ongacho was charged together with others not in this application of the offence of robbery with violence contrary to Section 295 as read with Section 296 (2) of the Penal Code Chapter 63 Laws of Kenya.
2. The particulars of the charge was that on the night of 22.11.2013 at about 10 p.m. while at Sikulu village, Kiminini sub-location in Bungoma North District (Sub county) within Bungoma County Jointly with others already before court, while armed with offensive weapons namely rungus and pangas, they robbed Dorcas Naboya Masakha of four male suits, thirty eight shirts, two jackets, one sweater, two radios make Sonytech and National, two solar lamps make Sunkin, two mobile handsets make Techno and Itel 2020, cash Ksh 200/- and assorted documents all valued at Ksh 0,000 and immediately before and/or immediately after the said robbery killed Henry Shitemi, the husband of the said Dorcas Naboya Masakha.
3. Upon conclusion of the trial, the applicant and his then co-accused person were convicted and sentenced to death was charged, tried and convicted of the offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* NO. 3 of 206 in Bungoma CMCRA (S.O) No. 42 of 2017. He was sentenced to serve 15 years custodial term on 27.12.2018.
4. Subsequent thereto the Appellant lodged an appeal being Bungoma HCCRA no. 1 of 2019, which was heard and dismissed.



5. The applicant has now moved this court craving for consideration of the term that he served prior to his conviction pursuant to the provisions of Section 333 (2) of the Civil Procedure Code.
6. I have perused the trial court file and noted that the accused person took plea on 12th June 2017 and was sentenced on 17.12.2018. Whereas he had been granted bond of Kshsh200,000 and one surety of a similar amount, he was not able to meet the bond terms wherefore he stood trial while in custody.
7. Premised upon the reasons afforested, I do find that the application herein is well merited. I will thus invoke the provisions of Section 333 (2) of the Criminal Procedure Code and in exercise of the jurisdiction bestowed upon this court under Section 364 (1) (b) of the Criminal Procedure Code, I do hereby order that the pre-conviction period of 1 year 6 months and 5 days served by the Applicant be deducted from his sentence of 15 years.
8. This file is hereby marked as closed. It is hereby so ordered.

DELIVERED, SIGNED, AND DATED AT BUNGOMA THIS 21ST DAY OF OCTOBER, 2025.

MWANAISHA S. SHARIFF

JUDGE.

