



**Ochieng v Republic (Criminal Miscellaneous Application
E050 of 2025) [2025] KEHC 9353 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E050 OF 2025**

A MABEYA, J

JUNE 27, 2025

BETWEEN

DANCAN OUMA OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Dancan Ouma Ochieng and others were charged in the Nyando SPM's Criminal Case No. 1886 of 2005 with robbery with violence contrary to section 296(2) of the Penal Code.
2. They were tried, found guilty, convicted and sentenced to death. Their appeals to the High Court and Court of Appeal failed on conviction but the sentences were reduced to 30 years' imprisonment.
3. By an undated Summons in Chambers, Dancan has sought that this Court does exercise its discretion under section 333(2) of the Criminal Procedure Code and order that his sentence does commence on the date he was first arraigned in Court. The State did not object to the application.
4. Section 333(2) of the Criminal Procedure Code provided that: -

“Subject to the provisions of section 38 of the Penal Code (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”
5. This is a statutory right to every accused person. That the time spent in custody be taken into consideration. In the present case however, since the Court of Appeal has already exercised its jurisdiction on this matter and specifically held that the sentence commence from the date of his first



sentence, this Court is bereft of any jurisdiction to second guess that Court. He can only go to that Court to seek its intervention.

6. Accordingly, I find that this Court has no jurisdiction to entertain the application and hereby dismiss the same.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

