



**Ochieng v Republic (Criminal Miscellaneous Application
E051 of 2025) [2025] KEHC 9319 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9319 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E051 OF 2025**

A MABEYA, J

JUNE 27, 2025

BETWEEN

POLYCAP OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 13/5/2024, Polycap Ochieng was charged with the offence of housebreaking contrary to section 304(1) (b) of the [Penal Code](#) Cap 63 Laws of Kenya. It was alleged that on 8/5/2024 at Menara village, within Muhoroni, he broke into the house of Maureen Wanyama and stole therefrom property valued at Kshs.25,000/-.
2. After trial, he was found guilty, convicted of the offence and sentenced to a total of seven (7) years' imprisonment. The applicant was in custody between 13/5/2024 and 13/11/2024, a period of 6 months.
3. By a Motion on Notice dated 1/4/2025, he sought that the provisions of section 333(2) of the [Criminal Procedure Code](#) be taken into account in computing the period of his incarceration. The State did not oppose 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. I have considered the entire record. I have also considered the proceedings of the trial Court, the judgment and sentence. The Court did not order that the period which the applicant spent in custody during the trial be taken into account.
6. In this regard, I find the application to be meritorious. I allow the same. I direct that the tabulation of the sentence of 7 years shall commence on 13/5/2024.

It is so ordered.

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

A. MABEYA, FCI Arb

JUDGE

