



**Ongana v Republic (Criminal Miscellaneous Application
E242 of 2024) [2025] KEHC 9284 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E242 OF 2024**

A MABEYA, J

JUNE 27, 2025

BETWEEN

COLLINS OCHIENG ONGANA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 28/7/2023, Collins Ochieng Ongana and others were charged with the offence of abduction with intent to confine contrary to section 259 of the [Penal Code](#) Cap 63 Laws of Kenya. It was alleged that on 2/7/2023 at Kabuothe area in Nyalenda 'B' they abducted Tracy Adhiambo with intent to cause her to be secretly and wrongfully confined.
2. After trial, he was found guilty convicted of the offence and sentenced to a total of 20 years' imprisonment. The Court did not direct that the period when the applicant was in custody during the trial be taken into consideration in computing the period of imprisonment. The applicant was in custody between 28/7/2023 and 15/4/2024, a period of about 9 months.
3. By a Motion on Notice dated 2/12/2024, the applicant has 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. Since the trial Court did not direct as stated in the above noted provision, I will revise the sentence in accordance therewith.
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 28/7/2023.

It is so ordered.

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

A. MABEYA, FCI Arb

JUDGE

