



**Omollo v Republic (Miscellaneous Criminal Application
E086 of 2023) [2024] KEHC 507 (KLR) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E086 OF 2023
RE ABURILI, J
JANUARY 26, 2024**

BETWEEN

WALTER AWINYO OMOLLO APPLICANT

AND

REPUBLIC RESPONDENT

*(Arising from the original conviction and sentence in Senior Principal
Magistrate Court Criminal Case No. 389 of 2017 at Winam)*

RULING

1. The Applicant Walter Awinyo Omollo is a convict in Winam SPM Criminal Case No. 389 of 2017 wherein he was convicted of the offences of obtaining by false pretence contrary to Section 313 of the [Penal Code](#) a sum of Kshs.1.5 million, five hundred thousand from Jacinta Awino Ogolla by falsely pretending that he was in a position to sell her land parcel Kisumu/Kanyakwar 'B'/963 measuring 0.10 Ha, a fact they knew to be false. He was jointly charged with Everlyne Atieno Obondo alias Lydia Awino Onyango.
2. The Convict was also convicted of 4 other counts of conspiracy to defraud, personation, making a false document, forgery and making a document – transfer of land parcel No. Kisumu/Kanyakwar 'B'/963,
3. From the lower court proceedings, the Applicant was sentenced to serve 2 years in counts 1 and 2, five years in count 3, 2 years in count 4 and 2 years in count 5.
4. The sentences were to run concurrently. The court also observes that the convict was not remorseful and had another case which was criminal case No. 554 of 2016.
5. In his application as filed herein, he claims to be 77 years old, of ill health, diabetes and anaemic. He prays that sentence imposed do take into account the 9 months spent in custody during the trial in the ten years currently serving.



6. I however observe that he is serving a five year concurrent sentences not ten years as alleged.
7. The convict has annexed court proceedings from Winam SPM Criminal Case No. 398 of 2017 which shows that the convict was granted bond of Kshs.2 million however, the convict after being released on bond jumped bail and warrants of arrest were issued and it was not until January 2018 from September 2017 that he was arrested four months later. He then remained in custody until the case was heard and determined.
8. Later on 26th March 2018, he pleaded guilty to count 1, 2, 3, 4 and 5 and was convicted accordingly.
9. As the convict herein jumped bail leading to his incarceration, he cannot blame his incarceration during the trial.
10. However, from January 2018 when he was arrested for jumping bail and 19th April 2018 when he was sentenced is four months since he has not attached any other proceedings showing any other period longer than 4 months.
11. I therefore allow the application under Section 333(2) of the *Criminal Procedure Code* and order that the concurrent sentences imposed shall be calculated taking into account four (4) months the convict was in custody after jumping bail, from his arrest and presentation to court on 19th January 2018 to 19th April 2018.
12. Signal to issue.
13. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF JANUARY, 2024

R. E. ABURILI

JUDGE

