



**Karanja v Republic (Criminal Revision E017 of 2024)  
[2024] KEHC 9116 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E017 OF 2024**

**DR KAVEDZA, J  
JULY 30, 2024**

**BETWEEN**

**DANIEL KARIUKI KARANJA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for two counts of the offence of robbery with violence contrary to section 295 as read with 296(2) of the *Penal Code*. He was sentenced to serve twenty (20) years imprisonment on each count to run concurrently. He has now filed an application seeking revision of sentence. He filed an affidavit in support of his motion. The arguments raised are that the trial court failed to consider the time she spent in remand custody during the computation of sentence under the provision of section 333(2) of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya.
2. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court record. The issue for consideration is whether the trial court considered the time the applicant spent in remand custody.
3. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to consider the time already spent in custody during sentencing. The court has a duty to take into account the period an accused person had remained in custody during sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms. This was acknowledged by the Court of Appeal in *Abamad Abolfathi Mohammed & Another vs. Republic [2018]* eKLR and *Bethwel Wilson Kibor vs. Republic [2009]* eKLR and more recently in the High Court case of *Vincent Sila Jona & 87 others vs Kenya Prison Service & 2 others [2021]* eKLR.



4. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
5. From the record, the applicant was arrested on 28<sup>th</sup> September 2015. He was granted a bond of Kshs. 300,000 with one surety of a similar amount. The bond was later reviewed to Kshs. 200,000. He however spent the entirety of his trial in remand custody until his conviction on 27<sup>th</sup> January 2020 amounting to four (4) years and four (4) months.
6. In *Abmed Abolfatbi Mohamed v Republic* [2018] eKLR the Court of Appeal held as follows;  

“Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to Section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellant’s sentence of imprisonment to run from the date of arrest on 19th June 2012.” (emphasis mine)
7. Although the trial court, indicated that the said period had been considered, the court was not specific on what amount of time was considered. Guided by the law, the court is of the view that the application ought to be considered, as failure to do so would amount to denying the applicant a right due to the failure of the court to discharge an obligation bestowed upon it by law.
8. I thus allow the application and order that the sentence of twenty (20) years imprisonment on each count shall be computed less by four (4) years and four (4) months and shall run concurrently from the date of conviction.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF JULY 2024**

**D. KAVEDZA**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

