



**Muroki v Republic (Criminal Revision 113 of 2024)  
[2024] KEHC 9833 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9833 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 113 OF 2024**

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

**BETWEEN**

**ANTONY MWAURA MUROKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. He was sentenced to serve ten (10) years imprisonment. 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 v Republic* [2018] eKLR and *Bethwel Wilson Kibor v Republic* [2009] eKLR and more recently in the High Court case of *Vincent Sila Jona & 87 others v 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 13<sup>th</sup> September 2011. He was arraigned in court for take plea and was never released on bail during the entirety of his trial. He was convicted on 4<sup>th</sup> October 2018. He, therefore, spent seven (7) years and twenty-one (21) days in remand custody. From the record, it is clear that the period was not factored in during his sentencing both by the trial and appellate court. 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.
6. I thus allow the application. In the premises, I make the following orders: the sentence of ten (10) years imprisonment shall be computed less by seven (7) years and twenty-one (21) days and shall run from the date of conviction.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY 2024**

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**D. KAVEDZA**

**JUDGE**

