



REPUBLIC OF KENYA



KENYA LAW
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**Leboo v Republic (Martial Appeal E001 of 2024)
[2024] KEHC 11512 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MARTIAL APPEAL E001 OF 2024
DR KAVEDZA, J
SEPTEMBER 30, 2024**

BETWEEN

ANTONY KEMEIWA LEBOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for various offences under the *Kenya Defence Forces Act*. After a full trial, he was sentenced as follows: Charge one, 6 months imprisonment; charge two, 9 months imprisonment; charge three 6 months imprisonment; charge four, 6 months imprisonment; charge five, 9 months imprisonment; charge six, 6 months imprisonment; charge seven, 1 year imprisonment and charge eight, 1 year imprisonment. The sentences were to run concurrently.
2. 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 reman 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.
3. 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.
4. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to consider the time already spent in custody. The duty to take in account the period an accused person had remained in custody in sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms 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 vs Kenya Prison Service & 2 others [2021] eKLR.

5. 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.
6. From the record, the applicant was arrested on 13th February 2021 and was never released on bond/bail during the entirety of his trial. He was convicted on 26th June 2024. From the record, it is clear that the period was not factored in during his sentencing. 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.
7. I thus allow the application. In the premises, I make the following orders: the sentence imposed by the Court Martial shall run from 13th February 2021, the date of the appellant's arrest, pursuant to Section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Applicant Present

Maroro for the Respondent

Achode Court Assistant

