



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njeri v Republic (Criminal Appeal E023 of 2024)  
[2024] KEHC 13274 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13274 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL APPEAL E023 OF 2024  
JN ONYIEGO, J  
OCTOBER 30, 2024**

**BETWEEN**

**JANE NJERI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the sentence delivered on  
12/6/23 by Hon. R. Aganyo-PM Wajir Law Courts)*

**JUDGMENT**

1. The appellant was charged and convicted for the offence of stealing contrary to section 268(2) as read with section 275 of the *Penal Code*. The particulars of the offence being that on unspecified date from 18.09.2022 to 27.11.2022 at A.C.K. Church premises in Wajir East Sub County within Wajir county he stole Kshs 197,000/-, the property of Tujijenge Self Help Group.
2. The appellant was convicted and thereafter sentenced to pay the amount owed to the group and in default, to serve three years' imprisonment.
3. She has filed an application seeking revision of sentence. She filed an affidavit in support of her motion arguing that the trial court failed to consider the time she spent in lawful custody during the computation of sentence under the provisions of section 333(2) of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya. The state conceded to the application.
4. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court's record. The issue for consideration is whether the trial court considered the time the applicant spent in remand custody.
5. 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 into account the period an accused person had remained



in custody pending trial 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 v Kenya Prison Service & 2 others [2021] eKLR.

6. It is trite therefore that the period which an accused person has been held in a lawful custody prior to being sentenced must be considered in meting out the sentence. From the record, the applicant was arrested on 30.11.2022 and was never released on bail and thus convicted on 23.05.2023. She therefore spent 5 months and 23 days in remand pending her trial.
7. From the record, it is clear that the period was not factored in during her sentencing by the trial magistrate. Guided by the law and pursuant to Article 165 (6) & (7) of the Constitution, this court is of the view that the application should be allowed as the same is her legal entitlement.
8. In the premises, I make the following orders: the sentence of 3 years' imprisonment shall be computed less 5 months and 23 days and the same shall run from the date of sentence by the trial court.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF OCTOBER 2024**

**J. N. ONYIEGO**

**JUDGE**

