



**Agesa v Republic (Criminal Revision 113 of 2023)
[2024] KEHC 13359 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 113 OF 2023
DR KAVEDZA, J
OCTOBER 29, 2024**

BETWEEN

SAMUEL AGESA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted on three counts of offences: grievous harm contrary to section 234 of the *Penal Code*, infringing on a child's right to healthcare contrary to section 9 as read with section 20 of the *Children's Act*, and failing to protect a child from physical abuse contrary to section 13(1) as read with section 20 of the *Children's Act*. The applicant was sentenced to serve an accumulative of three (3) years imprisonment.
2. He filed an application and an affidavit in support of his motion. The arguments raised are that the trial court failed to consider the time he spent in remand custody during the computation of sentence.
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 take into account 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 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.



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 taken into account 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 14th July 2022, and was never released on bail or bond until his conviction on 26th April, 2023. He, therefore, spent nine (9) months and twelve (12) days in remand custody. From the record, that the period was not factored in during his sentencing.
7. 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 imposed shall be computed less by nine (9) months and twelve (12) days spent in remand custody during his trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 29TH OCTOBER 2024

D. KAVEDZA

JUDGE

