



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**Matavi v Republic (Criminal Revision 26 of 2023)
[2023] KEHC 25744 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 26 OF 2023
DR KAVEDZA, J
NOVEMBER 23, 2023**

BETWEEN

CYRUS MATAVI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to ten (10) years imprisonment for the offence of robbery with violence contrary to section 295 as read with section 296(2) of the [Penal Code](#).
2. The applicant has now filed an undated Chamber Summons application seeking revision of his sentence. He prays that the court takes into account the period he spent in remand and revise his sentence. He further prays for a non-custodial sentence for the remaining part of his sentence.
3. The application is supported by an affidavit sworn by the applicant, Cyrus Matavi Mutsotso, in which he reiterates the said grounds.
4. While the application is premised on the provisions of section 333 (2) of the [Criminal Procedure Code](#), it invokes the revisionary jurisdiction of this court which is donated by section 362 of the [Criminal Procedure Code](#) which reads as follows:

“...The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.



5. Section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya provides that:

“(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

6. This court can only intervene to regularize the record to reflect the actual intention of Section 333 (2) of the *CPC* and to avoid any miscarriage of justice. Based on the foregoing, I allow the application and direct that the period the applicant spent in custody be included in the computation of his sentence by the Prison Officers. That is to say, that the sentence shall run effective from the date of arrest, which is 20th January 2018.

7. However, the prayer to serve a non-custodial sentence is dismissed.

8. It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 23rd DAY OF NOVEMBER 2023.

D.KAVEDZA

JUDGE

In the presence of:

Ms. Kibathi for the State.

Applicant absent (VTC).

Ms. Joy/ Ms. Njuguna C/A.

