



**Kirima v Republic (Miscellaneous Criminal Application
E181 of 2024) [2025] KEHC 2282 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E181 OF 2024**

**DR KAVEDZA, J
FEBRUARY 14, 2025**

BETWEEN

DAVID KIRIMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of defilement contrary to Section 8(1) and 8(2) of the *Sexual offences Act* No.3 of 2006. He was sentenced to serve 20 years imprisonment on 31st December 2021. Being dissatisfied, he filed a petition of appeal HCCR E019 of 2022. This Court dismissed the appeal and upheld his conviction and sentence in its entirety on 23rd May 2023.
2. He has now filed an application seeking revision of the sentence. He filed an affidavit in support of his motion on 14th November 2024. 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 pre-trial 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 *Ahamad 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.



5. It is therefore 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 13th February 2014 and was in custody until 8th April 2014 when his bond was approved. He was therefore in custody for only 54 days.
7. I also note that the applicant's bond was cancelled on 26th November 2021 upon conviction pending the sentencing hearing. He was sentenced on 31st December 2021, thus having spent 35 days in custody.
8. Cumulatively, the applicant was in pre-trial custody for a total of 89(eighty-nine) days, and not 7(seven) years as deponed in his affidavit. The affidavit is obviously based on falsehoods meant to mislead the Court. This is unacceptable.
9. Accordingly, I dismiss the application for being an abuse of the court process but direct the prison to compute his sentence less 89(eighty-nine) days spent in remand custody during the trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 14 {{TH}} FEBRUARY 2025

D. KAVEDZA

JUDGE

