



**Macharia v Republic (Miscellaneous Criminal Application  
E004 of 2025) [2025] KEHC 3246 (KLR) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3246 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E004 OF 2025**

**DR KAVEDZA, J  
FEBRUARY 17, 2025**

**BETWEEN**

**SAMUEL NJUGA MACHARIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted of the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* No 3 of 2006. The applicant was sentenced to 25 years imprisonment.
2. He filed the present notice of motion application and an affidavit in support of the same. 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 *Ahamad Abolfathi Mobammed & 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 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 21<sup>st</sup> February 2013, and was never released on bail or bond until his conviction on 3<sup>rd</sup> October 2013. He, therefore, spent seven (7) 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 seven (7) months and twelve (12) days spent in remand custody during his trial. The sentence shall commence on February 23, 2013.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 17TH FEBRUARY 2025**

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**D. KAVEDZA**

**JUDGE**

