



**Ngumbaru v Republic (Miscellaneous Criminal Application  
E018 of 2025) [2025] KEHC 2707 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E018 OF 2025**

**DR KAVEDZA, J  
MARCH 11, 2025**

**BETWEEN**

**JAMES KIBUE NGUMBARU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted of the offence of robbery with violence contrary to section 296(2) of the *Penal Code*; Possession of an imitation firearm section 34(1) of the *Firearms Act* and possession of ammunition contrary to section 89(1) of the *Penal Code*. The applicant was re-sentenced to serve fifteen (15) years in Count I, two (2) years in Count II and two (2) years in Count III. The sentences are running concurrently from 19<sup>th</sup> October 2016 the date of his first sentence.
2. He filed the present application and an affidavit in support of his motion seeking sentence review. The arguments raised are that the trial court failed to consider the time he spent in remand custody during the computation of his 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 23<sup>rd</sup> October 2013 and was never released on bail/bond until his conviction and sentence on 19<sup>th</sup> October 2016. He, therefore, spent two (2) years, eleven (11) months and twenty-six(26) 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 two (2) years, eleven (11) months and twenty-six (26) days pursuant to section 333(2) of the [Criminal Procedure Code](#).

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF MARCH 2025**

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**D. KAVEDZA**

**JUDGE**

