



REPUBLIC OF KENYA



Nyaga v Republic (Petition E017 of 2024) [2025] KEHC 4404 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA**

PETITION E017 OF 2024

DR KAVEDZA, J

APRIL 8, 2025

BETWEEN

EDWARD MURIUKI NYAGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of murder contrary to Section 203 as read with 204 of the *Penal Code* in Criminal case No.109 of 2009. He was sentenced to serve a death sentence. Upon appeal, his sentence was reviewed from death sentence to 30 years imprisonment, which was computed from 2nd November 2017; the date of sentence by the High Court in Criminal Appeal No. 74 of 2019.
2. He has now filed a petition seeking revision of sentence to comply with Section 333(2) of the *Criminal Procedure Code*.
3. He filed an affidavit in support of his petition. The arguments raised are that the trial court failed to consider the time he spent in remand custody during the computation of sentence.
4. 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.
5. 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.



6. From the record, the applicant was arrested on 2nd September 2009 and was never released on bail/ bond. He was convicted on 2nd November 2017. He, therefore, spent eight (8) years two (2) months in remand custody.
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 eight (8) years two (2) months spent in remand custody during his trial, that is to say, the sentence shall commence on 2nd September 2009 .

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 8TH APRIL 2025

D. KAVEDZA

JUDGE

