



**Nyaki v Republic (Criminal Revision 166 of 2024)  
[2025] KEHC 4426 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4426 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 166 OF 2024**

**DR KAVEDZA, J**

**APRIL 7, 2025**

**BETWEEN**

**PETER NYAKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted of the offence of stealing contrary to section 278A of the Penal Code. The applicant was sentenced to serve 7 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.
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. This duty 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. From the record, the applicant was arrested on 20<sup>th</sup> January 2023, and was never released on bail or bond until his conviction on 10<sup>th</sup> July 2024. He, therefore, spent one (1) year three (3) months and twenty-one (21) days in remand custody.



6. 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.
7. I thus allow the application and order that the sentence imposed shall be computed less by one (1) year three (3) months and twenty-one (21) days in remand custody. The sentence shall commence on 20<sup>th</sup> January 2023.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> APRIL 2025**

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**D. KAVEDZA**

**JUDGE**

