



**Ngwiri v Republic (Miscellaneous Criminal Application
E067 of 2025) [2025] KEHC 5512 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E067 OF 2025**

DR KAVEDZA, J

MAY 5, 2025

BETWEEN

JOHN KUMURU NGWIRI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for three counts of robbery with violence contrary to section 296(2) of the *Penal Code*. He was sentenced to serve twenty (20) years on each count to run concurrently. His appeal before this court and the Court of Appeal was dismissed.
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 30th June 2012 and was released on bail on 29th August 2012. He therefore spent two (2) months 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 of twenty years imprisonment on each count shall be computed less by two (2) months pursuant to section 333(2) of the [Criminal Procedure Code](#).

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

