



**Macharia v Republic (Miscellaneous Criminal Application
6 of 2025) [2025] KEHC 8436 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION 6 OF 2025**

DR KAVEDZA, J

JUNE 16, 2025

BETWEEN

SAMUEL KIMANI MACHARIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of trafficking in narcotic drugs contrary to section 4(a) of the [Narcotics and Psychotropic Substances \(Control\) Act](#) No 4 of 1994. He was sentenced to serve 25 years imprisonment. In addition, he was fined Kshs 20,790,000 in default to serve 12 months imprisonment. He appeal against conviction was dismissed on 7th May 2024, but was partially allowed on sentence. This court substituted the 25 years imprisonment with a sentence of ten(10) years to run from the date of conviction.
2. He has filed the present notice of motion seeking a revision of sentence. The arguments raised are that the trial court and this court failed to consider the time spent in reman custody during the computation of sentence under the provision of section 333(2) of the [Criminal Procedure Code](#), Cap 75 of the Laws of Kenya. In addition, he is remorseful and has been rehabilitated since his incarceration. He prayed for a non-custodial sentence in consideration of his advanced age.
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 consider 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 [Abamad 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. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
6. From the record of the court, the applicant was arrested on 30th August 2020 and was never released on bail/bond. He was convicted by the trial court on 21st February 2023. He, therefore, spent 2 years and 5 months in remand custody. From the record, it is clear that the period was not factored in during his sentencing by this court and the trial court. 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. The sentence of ten (10) years imprisonment in addition to the fine imposed of 20,790,000 in default to serve 12 months imprisonment shall run from 30th August 2020, the date of the applicant's arrest pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

