



**Okello v Republic (Miscellaneous Criminal Application  
E094 of 2025) [2025] KEHC 8379 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8379 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E094 OF 2025**

**DR KAVEDZA, J**

**JUNE 17, 2025**

**BETWEEN**

**FREDRICK OKELLO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for sentence review against the sentence delivered by  
Hon. E Riany (SRM) on 29th September 2022 at Kibera Chief Magistrates  
Court Criminal Case No.1129 of 2022 Republic vs Fredrick Okello)*

**RULING**

1. The applicant was charged with two counts of the offence of grievous harm contrary to section 234 of the *Penal Code*, Cap 63 Laws of Kenya. After a full trial, he was sentenced to serve ten (10) years imprisonment on each count. His appeal before this court was dismissed.
2. He has filed the present application dated 1<sup>st</sup> April 2025 seeking sentence review. The grounds raised in support of the application are that the trial court and this court failed to consider the time 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 *Abamad Abolfathi Mohammed & Another vs. Republic* [2018] eKLR and *Bethwel Wilson Kibor vs. Republic* [2009] eKLR



and more recently in the High Court case of *Vincent Sila Jona & 87 others vs 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 9<sup>th</sup> June 2022 and was never released on bond. He was convicted on 29<sup>th</sup> September 2022. The period was not factored in during the computation of his sentence by the trial court and this court on appeal.
7. In the premises, the application is allowed. The sentence imposed shall run from 9<sup>th</sup> June 2022 the date of the applicant's arrest pursuant to section 333(2) of the *Criminal Procedure Code*, Cap 75 Laws of Kenya.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF JUNE 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Applicant Present

Mutuma for the Respondent

Tonny Court Assistant.

