



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mulwale v Republic (Criminal Revision E064 of 2025)  
[2025] KEHC 10083 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10083 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E064 OF 2025**

**DR KAVEDZA, J  
JULY 14, 2025**

**BETWEEN**

**JOSEPH MAKOKHA MULWALE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and after a full trial convicted for the offence of stealing by servant contrary to section 268(1) as read with section 281 of the *Penal Code*. He was sentenced to pay a fine of Kshs. 500,000 in default to serve 12 months imprisonment.
2. He filed the present application 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 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 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 not sentenced to a custodial term but was instead given the option of paying a fine of Kshs. 500,000, with a default sentence of twelve months' imprisonment should he fail to pay the fine. It is therefore clear that the court did not impose a custodial sentence in the first instance.
7. The time the applicant may have spent in remand custody during the trial cannot be credited against the default custodial term, as the primary sentence remains a fine. The principle under section 333(2) of the *Criminal Procedure Code*, which allows for the period spent in lawful custody to be taken into account when passing sentence, does not apply in circumstances where the sentence is a fine with a default imprisonment. The rationale is that the default term only arises upon non-payment of the fine, and the applicant retains the option to settle the fine and avoid imprisonment altogether. As such, the time spent in remand cannot be used to reduce or negate the default sentence should the fine remain unpaid.
8. In the premises, the application is found to be lacking in merit and is dismissed.  
Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF JULY 2025**

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**D. KAVEDZA**  
**JUDGE**

