



**Wamuta v Republic (Criminal Revision 29 of 2024)
[2024] KEHC 2545 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2545 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 29 OF 2024
DR KAVEDZA, J
MARCH 12, 2024**

BETWEEN

GODFREY WAMUTA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and after a full trial convicted for the offence of stealing motor vehicle parts contrary to section 279 (C) of the Penal Code. He was sentenced to pay a fine of Kshs. 100,000 in default to serve 3 years imprisonment. In filed an application for sentence review. He urged the court to consider the time spent in remand custody pursuant to the provisions of section 333 (2) of the Criminal Procedure Code.
2. From the record, I note that the sentence imposed by the trial court was not a custodial sentence but the payment of a fine. The custodial sentence arises from the failure to pay the fine imposed by the trial court. In the premises, the provisions of section 333 (2) of the Criminal Procedure Code are not applicable.
3. As for the fines imposed for the offence, it was at the court’s discretion. However, regarding the default sentence, the trial court erred in respect imposing a 3 year default sentence. The default sentence ought to have been 12 months imprisonment under section 28 (2) of the Penal Code, Cap 63 Laws of Kenya.
4. In the premises I hereby set aside the sentence of a fine of Kshs. 100, 000 in default to serve 3 years and substitute it with the payment of a fine of Kshs. 100,000 in default to serve 12 months imprisonment.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 12TH MARCH 2024

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D. KAVEDZA
JUDGE

