



**Kabugi v Republic (Miscellaneous Criminal Application  
24 of 2023) [2024] KEHC 3644 (KLR) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3644 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION 24 OF 2023**

**DR KAVEDZA, J  
APRIL 15, 2024**

**BETWEEN**

**MARTIN MICHUKI KABUGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of committing a civil offence contrary to section 133 (1) (b) of the *Kenya Defence Forces Act* that is to say obtaining money by false pretenses contrary to section 313 of the *Penal Code*, Cap 63 Laws of Kenya. After a full trial he was sentenced to serve 2 years and 6 months imprisonment. The sentence was to run from the date of sentence. He has now filed an application seeking revision of sentence. He filed an affidavit in support of his motion. The arguments raised are that the trial court failed to consider the time she spent in remand 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.
2. 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.
3. 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 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.



4. 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.
5. From the record, the applicant was arrested on 28<sup>th</sup> January 2022. He was arraigned in court for take plea and was in custody for the entirety of his trial until his conviction on 25<sup>th</sup> August 2023. He, therefore, spent 1 year, 6 months and 28 days in remand custody. From the record, it is clear that the period was not factored in during his sentencing. 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.
6. I thus allow the application. In the premises, I make the following orders: the sentence of 2 years and 6 months shall be computed less by 1 year 6 months and 28 days which is to run from the date of conviction.
7. Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF APRIL 2024**

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**D. KAVEDZA**

**JUDGE**

