



**Njoroge v Republic (Criminal Revision 51 of 2023)
[2024] KEHC 3995 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 51 OF 2023**

DR KAVEDZA, J

APRIL 9, 2024

BETWEEN

JOHN WAWERU NJOROGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve twenty (20) years imprisonment. 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 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.
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 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.



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 4th May 2016. He was arraigned in court for take plea and was in custody for the entirety of his trial until his conviction on 4th October 2023. He, therefore, spent 7 years 4 months 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 20 years imprisonment is substituted with a sentence of fifteen years imprisonment. The sentence of fifteen years imprisonment shall be computed less by 7 years and 4 months which is to run from the date of conviction.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL 2024

D. KAVEDZA

JUDGE

