



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Gitege v Republic (Criminal Appeal 92 of 2023)  
[2024] KEHC 6152 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6152 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 92 OF 2023**

**DR KAVEDZA, J**

**MAY 6, 2024**

**BETWEEN**

**JOHN GAITHO GITEGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The appellant with another not before this court was charged, and after a full trial convicted for two counts for the offence of robbery with violence contrary to section 295 as read with section 296(2) of the *Penal Code*. He was sentenced to served to 20 years imprisonment on each count to run concurrently.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. On May 6, 2020, when the matter came for hearing of the appeal the appellant abandoned his appeal on conviction and opted to challenge the sentence imposed only. He made oral submissions and argued that the time spent in remand custody was not considered.
3. I have considered the appeal on sentence, the submissions 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 appellant 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 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 considered in meting out the sentence where it is not hindered by other provisions of the law.
6. I have considered the record and note that appellant was arrested on September 28, 2015 and was arraigned in Court the next day. He was admitted a bond of Kshs. 1,000,000 and a surety of a similar amount but it was latter reviewed to Kshs. 500,000 then Kshs. 300,000 then again Kshs. 200,000 with one surety of a similar amount. He however spent the entirety of his trial in remand custody until his conviction on January 27, 2020. The appellant therefore spent 4 years and 4 moths in remand custody.
7. 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 appeal ought to be considered, as failure to do so would amount to denying the appellant a right due to the failure of the court to discharge an obligation bestowed upon it by law.
8. I thus allow the application. In the premises, I make the following orders: the sentence of 20 years imprisonment on each count is upheld. The sentence shall run concurrently from September 29, 2015, the date of the appellant's arraignment.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 6TH DAY OF MAY 2024**

---

**D. KAVEDZA**

**JUDGE**

