



**Lepulote v Republic (Miscellaneous Criminal Application
9 of 2024) [2024] KEHC 6373 (KLR) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION 9 OF 2024**

DR KAVEDZA, J

JUNE 3, 2024

BETWEEN

LITEREWUA LEPULOTE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. He was convicted to serve eight 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 22nd March 2022. He was arraigned in court for take plea. He was granted a bond of Kshs. 500,000 with one surety but spent the entirety of his trial in remand custody until his conviction on 29th March 2023. He, therefore, spent 12 months in remand custody. From the record, it is clear that the period was factored in during his sentencing. The court indicated that the sentence should commence from the date of arrest.
6. The upshot of the above is that the application is dismissed for lacking in merit.
Orders accordingly.

Ruling dated and delivered virtually this 3rd day June 2024

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D. KAVEDZA

JUDGE

