



**Rakwoni v Republic (Criminal Revision E006 of 2024)  
[2024] KEHC 7040 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E006 OF 2024**

**DR KAVEDZA, J  
JUNE 10, 2024**

**BETWEEN**

**STEPHEN KASMIL RAKWONI ..... 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 sentenced to death. He filed an appeal challenging his conviction and sentence. On 4<sup>th</sup> July 2020, Hon. Kimaru J (as he then was) resented the appellant to serve 20 years imprisonment with effect from the date of the said judgment. 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 *Ahamad 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. During the sentencing proceedings by Hon. Kimaru J (as he then was) the Judge noted that the applicant had been in lawful custody for 5 years since his conviction by the trial court. In imposing a substituted sentence, the court indicated that it had taken into consideration the period of 5 years spent in custody before his conviction.
6. From the record, the applicant was arrested on 2<sup>nd</sup> October 2012. He was never released on bail during his trial until his conviction on 15<sup>th</sup> December 2014. He therefore, spent 2 years 2 months and 13 days in remand during the trial. From the record, it is clear that the period was not factored in during his sentencing by the trial magistrate as well as on appeal. Guided by the law, the court is of the view that the application should be allowed. 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.
7. In the premises, I make the following orders: the sentence of twenty (20) years imprisonment shall be computed less two (2) years, two (2) months and thirteen (13) days and shall run from the date of conviction by the High Court.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 10<sup>TH</sup> DAY OF JUNE 2024**

**D. KAVEDZA**

**JUDGE**

