



REPUBLIC OF KENYA



**Emuget v Republic (Criminal Revision 30 of 2024)
[2024] KEHC 8826 (KLR) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8826 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 30 OF 2024**

DR KAVEDZA, J

JULY 22, 2024

BETWEEN

MAXWELL OSONYO EMUGET APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of defilement contrary to section 8 (1) as read with section 8(4) of the [Sexual Offences Act](#), No. 3 of 2006. He was sentenced to serve thirty (30) years imprisonment. He filed an appeal challenging his conviction and sentence vide Milimani High Court Criminal Appeal No. 47 of 2019. The appeal failed on conviction but was successful on sentence. The High Court reduced his sentence to fifteen (15) years to run from the date of conviction.
2. 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.
3. 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.
4. The proviso to section 333(2) of the [Criminal Procedure Code](#) obligates the court to consider the time already spent in custody during sentencing. The court has a duty to take into account the period an accused person had remained in custody during sentencing under the proviso to section 333(2) of the [Criminal Procedure Code](#) which is couched in mandatory terms. This 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.

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. From the record, the applicant was arrested on 17th June 2017. He was arraigned in court for take plea. He was granted a bond of Kshs. 500,000 with one surety of a similar amount. He however spent the entirety of his trial in remand custody until his conviction on 7th December 2018. He, therefore, spent 1 year 5 months and 20 days in remand custody. From the record, it is clear that the period was not factored in during his sentencing both by the trial and appellate court. 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.
7. I thus allow the application. In the premises, I make the following orders: the sentence of fifteen (15) years imprisonment shall be computed less by one (1) year, five (5) months and twenty (20) days and shall run from the date of conviction.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JULY 2024

D. KAVEDZA

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

