



**Irungu v Republic (Miscellaneous Criminal Application  
30 of 2024) [2024] KEHC 8435 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8435 (KLR)

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

**DR KAVEDZA, J**

**JULY 15, 2024**

**BETWEEN**

**MARY WAITHERA IRUNGU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, was tried and convicted of the offence of trafficking in narcotic drugs contrary to Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*, No. 4 of 1994. Upon her conviction, the appellant was sentenced to serve 14 years imprisonment. She challenged her conviction on appeal before this court vide Kibera Criminal Appeal no. 31 of 2023. On 8<sup>th</sup> December 2023 this court dismissed her appeal for lacking in merit.
2. She has now filed the present application seeking clarification of the Judgement issued by this Court on 8th December 2023, on what time ought to be considered as the time spent in remand custody.
3. I have considered the application and the impugned judgement of this case. I note that in making that determination, this court considered the ground of appeal raised, the record of appeal, the written submissions, and the applicable law.
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. The decision of this court is very clear and requires no further clarification. The only issue is that the order was not specific on the amount of time the applicant.
7. From the record, the applicant was arrested on 25<sup>th</sup> November 2006. She pleaded not guilty and was tried and convicted on 14<sup>th</sup> September 2011. During her trial she was released on bond. She challenged her conviction and sentence at the High Court sitting in Nairobi vide Criminal Appeal No. 210 of 2012. Her appeal was successful and the court ordered a retrial on 19<sup>th</sup> September 2013. She took plea a second time on 2<sup>nd</sup> October 2013. The applicant applied to be released on reasonable bail terms. Her advocate on record, Mr. Oundu pointed out that she had been admitted to bail in her original trial and prayed to be granted bail.
8. On 12<sup>th</sup> November 2013, the applicant was released on bond of Kshs. 2 million with two sureties of a similar amount. She therefore spent 1 month and 10 days in remand custody and 2 years and 5 days serving the sentence that was set aside by the trial court. Cumulatively, she spent 2 years 1 month and 15 days in custody, which should be considered in the computation of the applicant's sentence.
9. I thus allow the application. In the premises, I make the following further orders to the judgement delivered on 8<sup>th</sup> December 2023. The sentence of fourteen (14) years imprisonment shall be computed less by two (2) years, one (1) month, and fifteen (15) days and shall run from the date of conviction.

**RULING DATED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF JULY 2024**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Applicant present

Ms. Omurokha for the Respondent

Naomi/Nelson Court Assistants.

