



**Mangondu v Republic (Criminal Revision 143 of 2024)
[2024] KEHC 8507 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 143 OF 2024
DR KAVEDZA, J
JULY 15, 2024**

BETWEEN

SIMON MUSUNDE MANGONDU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of dealing in wildlife trophy without a permit contrary to section 92(2) of the *Wildlife Conservation and Management Act*, 2013. He was sentenced to serve 7 years imprisonment.
2. He has now filed the present application seeking sentence review. The grounds raised are that sentence review. The grounds raised are that during sentencing the trial court failed to consider the time spent in remand custody.
3. The arguments raised are that the trial court and the appellant 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.
4. 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 this court considered the time the applicant spent in remand custody.
5. 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.

6. 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.
7. From the record, the applicant was arrested on 12th March 2021. He was arraigned in court for take plea. He was released on bond on 3rd December 2021 until his conviction on 22nd February 2022. He, therefore, spent 8 months and 21 days in remand custody. 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 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.
8. I thus allow the application. In the premises, the sentence of seven (7) years imprisonment shall be computed less by 8 months and 21 days and shall run from the date of conviction.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JULY 2024

D. KAVEDZA

JUDGE

