



**Mwaniki v Republic (Criminal Revision E024 of 2024)
[2024] KEHC 10829 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10829 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E024 OF 2024
DR KAVEDZA, J
SEPTEMBER 17, 2024**

BETWEEN

MICHAEL MWANGI MWANIKI 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(3) of the *Sexual offences Act*, No. 3 of 2006. He was sentenced to serve twenty (20) years imprisonment. The sentence was however reduced to fifteen (15) years on appeal before this court in Milimani Criminal Appeal No. 20 of 2018 delivered on 22nd July 2020 to run from the date of conviction and in consideration of the time spent in remand custody.
2. He has filed the present chamber summons seeking sentence review. The grounds raised are that he spent 4 years and 6 months in remand custody which time was not considered by the court.
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 provision 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 consider 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 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. From the record of this court, Kimaru J (as he then was) while sitting on appeal categorically stated that the period the applicant was in custody considered and reduced the sentence from twenty years to fifteen years.
7. In the premises, I find that the application is found to be lacking in merit and is dismissed.
Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER 2024

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D. KAVEDZA
JUDGE

