



Kariuki & another v Republic (Criminal Revision 254 & 257 of 2024 (Consolidated)) [2024] KEHC 12391 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 254 & 257 OF 2024 (CONSOLIDATED)**

**DR KAVEDZA, J
OCTOBER 15, 2024**

BETWEEN

SIMON NDUNGU KARIUKI 1ST APPLICANT

THEOPHILE UYISABA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged and convicted for the offence of stealing motor vehicle contrary to section 278A of the [Penal Code](#). They were each sentenced to serve four (4) years imprisonment.
2. They filed the present applications praying that the time spent in remand custody be considered. The arguments raised are that the trial court failed to consider the time she spent in remand custody during the computation of sentence.
3. I have considered the applications, the affidavits 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 take into account 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 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 taken into account in meting out the sentence where it is not hindered by other provisions of the law.
6. From the record, the applicants were arrested on 2nd April 2023, and were never released on bail/bond. They were convicted on 15th August 2024 having spent one (1) year, four (4) months and thirteen (13) days in remand custody. During sentencing the trial court was not specific on what period was to be considered and as the consequence, the implication is that the period was not considered.
7. 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 and order that the sentence imposed shall be computed less by one (1) year, four (4) months and thirteen (13) days spent in remand custody during trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH OCTOBER 2024

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D. KAVEDZA

JUDGE

