



**Mwanje v Republic (Miscellaneous Criminal Application
E152 of 2024) [2024] KEHC 12118 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E152 OF 2024**

DR KAVEDZA, J

OCTOBER 8, 2024

BETWEEN

CONCEPTA ACHITSA MWANJE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the attempted murder contrary to section 220(b) of the Penal Code. She was sentenced to serve 30 years imprisonment. Her appeal to this Court was dismissed.
2. She filed the present application seeking revision of sentence. The arguments raised are that the trial court and this 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 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, the applicant was arrested on 4th January 2009 and was never released on bail/bond until her conviction. From the record, that the period was not factored in during his sentencing by the trial court and again by this Court on appeal.
7. In *Ahmed Abolfathi Mohamed v Republic* (supra) the Court of Appeal held as follows;

“Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to Section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellant’s sentence of imprisonment to run from the date of arrest on 19th June 2012.”
8. 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.
9. I thus allow the application and order that the sentence of seven (7) years imprisonment shall be run from 4th January 2009 the date of the appellant’s arrest pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 8TH DAY OF OCTOBER 2024

D. KAVEDZA

JUDGE

