



**Njoroge v Republic (Miscellaneous Criminal Application  
E140 of 2024) [2024] KEHC 12248 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12248 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E140 OF 2024**

**DR KAVEDZA, J  
OCTOBER 14, 2024**

**BETWEEN**

**PETER MATHENGE NJOROGE ..... 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 8(3) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve 30 years imprisonment. His appeal to this Court was partially allowed with his sentenced substituted with a sentence of twenty (20) years vide Nairobi Criminal Appeal No. 65 of 2018.
2. He filed the present application seeking revision of sentence. He filed an affidavit in support of his motion. The arguments raised are that the trial 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 *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. From the record, the applicant was arrested on 21<sup>st</sup> September 2015 and was never released on bail/ bond. He was convicted on 14<sup>th</sup> February 2018. He, therefore, spent two (2) years four (4) months and twenty-four (24) days in remand custody. From the record, that the period was not factored in during his sentencing.
7. In *Abmed Abolfatbi 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 imposed shall be computed less by two (2) years four months and twenty-four (24) days in remand custody during his trial.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF OCTOBER 2024**

.....

**D. KAVEDZA**

**JUDGE**

