



**Opiyo v Republic (Criminal Revision E119 of 2024)
[2024] KEHC 12482 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E119 OF 2024
DR KAVEDZA, J
OCTOBER 15, 2024**

BETWEEN

WILFRED ONYANGO OPIYO 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(2) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve 20 years imprisonment. He has now filed an application seeking revision of sentence.
2. 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 reman custody during the computation of sentence.
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 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 *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 taken into account 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 23rd February 2019 and was released on bond on 21st March 2019. He, therefore, spent one month in remand custody. From the record, that the period was not factored in during his sentencing.
- 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 month spent in remand custody during his trial.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH OCTOBER 2024

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D. KAVEDZA

JUDGE

