



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Okonda v Republic (Criminal Revision 252 of 2024)
[2024] KEHC 12168 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 252 OF 2024
DR KAVEDZA, J
OCTOBER 14, 2024**

BETWEEN

BOSS MISIKO OKONDA 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(4) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve fifteen (15) years imprisonment. He has now filed an 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 reman 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.
2. 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.
3. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to consider 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 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.



4. 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.
5. From the record, the applicant was arrested on 11th June 2023. He was never released on bond until his conviction on 15th July 2024. From the record, it is clear that the period was not factored in during his sentencing. 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.
6. I thus allow the application. In the premises, I make the following orders: the sentence of fifteen years imprisonment shall be computed from June 11, 2023 the date of the applicant'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 14TH OCTOBER 2024

D. KAVEDZA

JUDGE

