



REPUBLIC OF KENYA



KENYA LAW
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**Wafula v Republic (Criminal Revision 259 of 2024)
[2024] KEHC 12376 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 259 OF 2024
DR KAVEDZA, J
OCTOBER 15, 2024**

BETWEEN

KENNEDY WAFULA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of trafficking in Narcotic Drugs contrary to section 4(a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994. He was sentenced to serve four (4) years imprisonment. The sentence was to run from 16th May 2023.
2. He filed the present application seeking sentence review. The arguments raised are that the trial court failed to consider the time he spent in remand 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 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 v 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 trial court indicated when the sentence should start running in very clear terms which was when taking plea. As such, the period was taken into consideration. The period was therefore factored into during his sentencing.

7. I thus dismiss the application for lacking in merit.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH OCTOBER 2024

D. KAVEDZA

JUDGE

