



REPUBLIC OF KENYA



**Kiarie & another v Republic (Criminal Revision 275 of 2024)  
[2024] KEHC 13321 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13321 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 275 OF 2024  
DR KAVEDZA, J  
NOVEMBER 4, 2024**

**BETWEEN**

**PETER NJOROGE KIARIE ..... 1<sup>ST</sup> APPLICANT**

**JAMES MWANGI MAINA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicants were charged and convicted for two counts of robbery with violence contrary to section 296(2) of the *Penal Code*. They were sentenced to serve 7 years imprisonment for each of the two counts and the sentence to run concurrently. 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 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 *Abamad 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. From the record, the applicant was arrested on 2<sup>nd</sup> April 2024 and was never released on bail/bond. He was convicted on 19<sup>th</sup> June 2024. He, therefore, spent two (2) months in remand custody. From the record, that period was not clearly accounted for during his sentencing.
6. 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.
7. I thus allow the application, for avoidance of doubt, and order that the sentence imposed by the trial shall run from 2<sup>nd</sup> April 2024 pursuant to section 333(2) of the [Criminal Procedure Code](#), Cap 75 Laws of Kenya.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 4<sup>TH</sup> NOVEMBER 2024**

**D. KAVEDZA**

**JUDGE**

