



REPUBLIC OF KENYA



**Dzumbembe v Republic (Criminal Revision 283 of 2024)
[2024] KEHC 15911 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 283 OF 2024
DR KAVEDZA, J
DECEMBER 17, 2024**

BETWEEN

ALI HATIBU DZUMBEMBE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and after a full trial convicted for the offence of obtaining money by false pretences contrary to section 313 of the [Penal Code](#). He was sentenced to three (3) years imprisonment.
2. The applicant submitted an undated application received on 11th November 2024, seeking revision of the sentence imposed. The grounds for the application are that he suffers from health complications, and he requests the court to revise the sentence to a non-custodial one.
3. I have considered the application, supporting grounds, and relevant law. The trial court record shows that the applicant's mitigation, the time spent in remand, and his status as a first offender were duly considered before sentencing. The sentence imposed was lawful given the circumstances. Additionally, the applicant has not offered restitution to the complainant, despite the substantial sum obtained by false pretences.
4. In my view, no valid reason or sufficient cause has been presented to warrant revising the sentence imposed by the trial court. Therefore, the application is dismissed.
5. Nonetheless, the proviso to section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time spent in remand custody during sentencing. This duty 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.



6. From the record, the applicant was arrested on 19th May 2021 and released on bail on 18th June 2021. He therefore spent 30 day in remand custody which period was not considered during his sentencing.
7. In the premises, the sentence of three (3) years imprisonment shall be computed less by thirty (30) days and shall run from the date of the applicant's conviction.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 17TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

