



**Makanga v Republic (Miscellaneous Criminal Application
E139 of 2024) [2024] KEHC 15823 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E139 OF 2024**

**DR KAVEDZA, J
DECEMBER 16, 2024**

BETWEEN

SIMON KIPISU MAKANGA 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(3) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve 25 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 he spent in reman custody during the computation of sentence.
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 2013 and admitted to bail. He was however released on bail. He absconded and was arrested pursuant to a warrant of arrest on 31st October 2016. He remained in custody for the remainder of his trial until his conviction on 25th January 2019. He, therefore, spent 2 years, 2 months and 25 days in remand custody. From the record, it is clear that the period was not specifically 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 twenty-five years imprisonment shall be computed less by two (2) years, two (2) months and twenty-five (25) days which is to run from the date of conviction.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

