



REPUBLIC OF KENYA



**Opwapo v Republic (Criminal Revision E083 of 2024)
[2024] KEHC 15818 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E083 OF 2024
DR KAVEDZA, J
DECEMBER 16, 2024**

BETWEEN

SAMUEL OMONDI OPWAPO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of preparation to commit a felony contrary to section 308(1) of the *Penal Code*. He was sentenced to serve two (2) 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 23rd May 2023. He was arraigned in court for take plea and was in custody for the entirety of his trial until his conviction on 29th August 2024. He, therefore, spent 1 year, 3 months and 6 days in remand custody. 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 two years imprisonment shall be computed less by one (1) year, three (3) months and six (6) 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

