



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutisya v Republic (Criminal Revision E100 of 2025)  
[2025] KEHC 13664 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13664 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E100 OF 2025  
DR KAVEDZA, J  
OCTOBER 2, 2025**

**BETWEEN**

**GEOFFREY MUTISYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of warehouse breaking and stealing contrary to section 306(a) of the [Penal Code](#). He was sentenced to serve two (2) years imprisonment.
2. He filed the present application and an affidavit in support of his motion 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 his 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 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.
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 considered in meting out the sentence where it is not hindered by other provisions of the law.



6. From the record, it is evident that the Applicant was admitted to bail during the pendency of the trial. He was therefore not in continuous custody in relation to the present matter. The fact that he was subsequently arrested and detained in connection with a separate and distinct offence does not entitle him to seek credit for that period of incarceration as part of the sentence in this case. The law requires that credit for time served is only attributable to custody directly referable to the offence for which the accused is convicted and sentenced. To hold otherwise would amount to conflating separate proceedings and offences, which this Court cannot sanction.
7. From the record, the applicant was released on bail during trial. He has however arrested on another offence. As such this cannot be considered as part of the time spent in custody in this case.
8. In the premises, the application is found to be lacking in merit and is dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF OCTOBER 2025**

**D. KAVEDZA**

**JUDGE**

