



REPUBLIC OF KENYA



**KENYA LAW**  
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**Naibei v Republic (Criminal Revision 76 of 2025)  
[2025] KEHC 14385 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14385 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 76 OF 2025  
DR KAVEDZA, J  
OCTOBER 13, 2025**

**BETWEEN**

**AUGUSTINE NAIBEI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The appellant Augustine Naibei was charged and after a full trial convicted for the offence of indecent act with a child contrary to Section 11 of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve fifteen (15) years imprisonment.
2. He filed the present undated application received on 13<sup>th</sup> August 2025 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 *Ahamad 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 be taken into account in meting out the sentence where it is not hindered by other provisions of the law.
6. From the record, the applicant was arrested on 8<sup>th</sup> June 2020 and was released on bail on 1<sup>st</sup> December 2020. The applicant was in custody for a period of five months and twenty two days. From the record, that the period was not factored in during his sentencing.
7. 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.
8. I thus allow the application and order that the sentence of fifteen (15) years imprisonment shall be computed less by five (5) months and twenty - two (22) days pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF OCTOBER 2025.**

.....

**D. KAVEDZA**

**JUDGE**

