



**Mukhwana v Republic (Criminal Revision 79 of 2025)
[2025] KEHC 15121 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 79 OF 2025
DR KAVEDZA, J
OCTOBER 27, 2025**

BETWEEN

NELSON MANDELA MUKHWANA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offense of Assault Causing Bodily Harm Contrary to Section 251 of the Penal Code. He was sentenced to three [3] years' imprisonment. He has now filed an application seeking revision of sentence.
2. 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 remand custody during the computation of 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 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. From the record, the applicant was arrested on 9th July 2023. He therefore



spent eight [8] months in remand custody. From the record, that period was not clearly accounted for during his sentencing.

6. 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.
7. I thus allow the application, for avoidance of doubt, and order that the sentence imposed by the trial shall run from 9th July 2024 pursuant to section 333[2] of the Criminal Procedure Code, Cap 75 Laws of Kenya.
8. Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF OCTOBER 2025

D. KAVEDZA

JUDGE

