



REPUBLIC OF KENYA



KENYA LAW
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**Sidwaka v Republic (Criminal Revision 60 of 2023)
[2025] KEHC 16154 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 60 OF 2023
DR KAVEDZA, J
NOVEMBER 10, 2025**

BETWEEN

JUSTUS OMONDI SIDWAKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of robbery with violence contrary to section 295 as read with 296 (2) of the Penal Code. He was sentenced to serve twenty (20) years imprisonment.
2. The applicant has now filed an application seeking a revision of sentence in consideration of section 333 (2) of the Criminal Procedural Code. The application is supported by an affidavit sworn by the applicant.
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 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 mandatory that the period which an accused has been held in custody prior to being sentenced should 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 14th October 2016 and was never released on bail/bond. He was convicted on 27th March 2019 and spent two years, five months and thirteen days in remand custody. From the record, the period was not factored in by the trial court 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 twenty (20) years imprisonment shall be run from 14th October 2016, the date of the applicant's arrest pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 10TH DAY OF NOVEMBER 2025

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D. KAVEDZA

JUDGE

