



REPUBLIC OF KENYA



KENYA LAW
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**Kinyaa v Republic (Criminal Revision 28 of 2025)
[2025] KEHC 17006 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 28 OF 2025
DR KAVEDZA, J
NOVEMBER 18, 2025**

BETWEEN

HENRY MUMI KINYAA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of stealing contrary to section 268 as read with Section 278 of the Penal Code. After a full trial, he was sentenced to pay Kshs. 100,000 in default to serve 12 months imprisonment.
2. He has filed the present undated application seeking sentence review. The grounds raised in support of the application are that the trial court and this court failed to consider the time 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 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 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 23rd August 2024 and was released on bond on 23rd December 2025. He was convicted on 2nd April 2025. The period (3 months and 24 days) was not factored in during the computation of his sentence by the trial court and this court on appeal.
7. In the premises, the application is allowed. The sentence imposed shall be computed less by three months and twenty four days pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 18TH DAY OF NOVEMBER 2025

D. KAVEDZA

JUDGE

