



**Njuguna & another v Republic (Criminal Revision E098 of 2025)
[2025] KEHC 16926 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E098 OF 2025
DR KAVEDZA, J
NOVEMBER 18, 2025**

BETWEEN

PATRICK MWANGI NJUGUNA 1ST APPLICANT

CALEB NAKOMELE 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged with two counts of offences: Count I, conspiracy to commit a felony contrary to 393 of the Penal Code, and stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. After a full trial, they were each sentenced to serve two (2) years on each count to run concurrently.
2. They have 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 1st applicant and 2nd applicant were arrested on 7th July 2022 and was released on bond on 24th July 2023 and 1st November 2022, respectively. They were convicted on 20th August 2025. The 1st applicant spent one (1) year and seventeen (17) days in remand custody while the second applicant spent three (3) months and twenty-five (25) days in remand custody. From the sentencing proceedings, this period was never taken into consideration.
7. In the premises, the application is allowed. The sentence of two years imprisonment on each count shall be computed less by one (1) year and seventeen (17) days against the 1st applicant and three (3) months and twenty five (25) days against the 2nd applicant 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

