

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL REVISION NO. 29 OF 2025

AMOS ONKUNDI OMBATI.....APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

RULING.

1. The applicant was charged with the offence of stealing contrary to section 268 (2) (e) as read with Section 275 of the Penal Code. After a full trial, he was sentenced to pay Kshs. 330,000 in default, two (2) years 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 into 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 25th July 2020 and was released on bond on 17th September 2020. He therefore spent one (1) month and twenty four (24) days in remand custody which period was not factored in by the trial court.
7. In the premises, the application is allowed. The sentence imposed shall be computed less by one (1) month and twenty-four (24) 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**