

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL REVISION NO. E122 OF 2025

ERICK MUMO KILONZO.....APPLICANT

VERSUS

REPUBLIC.....

RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of manslaughter contrary to section 202 as read with section 205 Penal Code. He was sentenced to serve fifteen (15) years imprisonment.
2. He has now filed an application seeking revision of sentence. The arguments raised are that the trial court failed to consider the time he spent in remand custody during the computation of sentence under the provision of section 333(2) of the Criminal Procedure Code, Cap 75 of the Laws of Kenya.
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 consider 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 considered 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 6th February 2023 and was never released on bond. He therefore spent two years in remand custody. The sentencing proceedings did not indicate that the period spent in remand custody considered.
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. In the premises, I make the following orders: the sentence of fifteen years imprisonment shall run from 6th February 2023, the date of the applicant's arrest pursuant, section 333(2) of the Criminal Procedure Code.
Orders accordingly.

**Ruling dated and delivered virtually this 16th Day of
December 2025**

**D. KAVEDZA
JUDGE**