

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL REVISION NO. E137 OF 2025

RONEY NDERI MACHARIA.....APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

RULING.

1. The applicant was charged with two counts of the offence of stealing contrary 268 as read with section 275 of the Penal Code. After a full trial, he was sentenced to serve one year imprisonment on each count to run consecutively.
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 8th October 2024 and was never released on bail/bond and was convicted on 11th December 2025. He therefore spent fourteen months and three days in remand custody.
7. From the record, the period was not factored in during the computation of his sentence by the trial court.
8. In the premises, the application is allowed. The sentence imposed shall be run from 8th October 2024, the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

**Ruling dated and delivered virtually this 19th February
2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Applicant Present
Mutuma for the Respondent
Karimi Court Assistant.