



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waithera v Republic (Criminal Revision E003 of 2026)  
[2026] KEHC 1803 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1803 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E003 OF 2026  
DR KAVEDZA, J  
FEBRUARY 17, 2026**

**BETWEEN**

**DANCUN NDEGWA WAITHERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of rape contrary to section 3(1)(a)(b) as read with section 3(3) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve twenty-five (25) years imprisonment. Aggrieved he filed an appeal challenging his conviction and sentence. The appeal was partially allowed and the sentence of 25 years imprisonment substituted with a sentence of ten (10) years imprisonment.
2. He filed the present application and an affidavit in support of his motion seeking sentence review. The arguments raised are that the trial court failed to consider the time he 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 v. Republic* [2018] eKLR and *Bethwel Wilson Kibor v. Republic* [2009] eKLR and more recently in the High Court case of *Vincent Sila Jona & 87 others v 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, it is evident that the appellate court, in its judgment substituting the sentence, expressly took into account the period the applicant had spent in remand custody. The court was explicit that the substituted sentence was to run from 10th February 2022. That direction was clear, deliberate, and formed an integral part of the sentencing order. There is therefore no ambiguity as to the commencement date of the sentence, nor is there any basis upon which this court can be invited to revisit or re-interpret that finding.
7. In the premises, the application is found to be lacking in merit and is dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**D. KAVEDZA**

**JUDGE**

