



REPUBLIC OF KENYA



KENYA LAW
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**Mbugu & 2 others v Republic (Criminal Revision E014 of 2026)
[2026] KEHC 3238 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E014 OF 2026**

**DR KAVEDZA, J
MARCH 10, 2026**

BETWEEN

ALLAN OMIDE MBUGU 1ST APPLICANT

EVANS MACHAYO DUARO 2ND APPLICANT

JUSTIN ABUYA 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged and convicted for the offence of attempted Robbery with Violence contrary to section 296 (2) of the Penal Code in Count I. Count II they were charged with rape Contrary to Section 3 (1) (A) (C) (3). They were sentenced to 6 years imprisonment in Count 1 and 1 year imprisonment in Count II.
2. The grounds raised are that the court failed to consider the time spent in pretrial custody. They aver that the eleven (11) months and fifteen (15) days was not factored in during sentencing. Since their incarceration, they have reformed.
3. I have considered the application, 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 trial court considered the time spent in remand custody during the sentencing on appeal. The court consequently ordered that the sentence imposed to run from the date of conviction.
7. In the premises, the application is found to be lacking in merit and is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 10TH OF MARCH 2026

D. KAVEDZA

JUDGE

