

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
MISC.CRIMINAL APPLICATION NO. E217 OF 2025

AMINA NAGUDI.....APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of grievous harm contrary to section 234 of the Penal Code. She was sentenced to serve 5 years imprisonment. She 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 she spent in remand custody during the computation of his sentence.
2. 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.
3. 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.

4. 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.
5. From the record, the applicant was arrested on 6th March 2024. She therefore spent (29) days. From the record, the time has not been taken into account during the computation of the sentence.
6. In the premises, the applicant shall serve his custodial sentence less by (1) month pursuant to section 333(2) of the Criminal Procedure Act, Cap 75 Laws of Kenya.

Orders accordingly.

**Ruling dated and delivered virtually this 10th Day of
March 2026**

D. KAVEDZA
JUDGE