



**Rasto v Republic (Criminal Revision E098 of 2025)
[2026] KEHC 3802 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E098 OF 2025
DR KAVEDZA, J
MARCH 12, 2026**

BETWEEN

CALEB NAKOMERE RASTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and after a full trial convicted for the offence of Conspiracy to commit Felony contrary to section 393 of the Penal Code on Count I. Count II he was charged with the offence of Stealing contrary to Section 268 (1) as read with section 275 of the Penal Code. He was sentenced to serve two (2) years' imprisonment on each count.
2. He has filed the 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. The record shows that the High Court, in its ruling delivered on 18th November 2025, indicated that it had considered 3 months and 25 days spent in custody. However, upon a careful re-evaluation of the record, it is evident that additional periods of remand custody were not taken into account, namely: 11th May 2022 to 25th May 2022 (15 days), 15th July 2022 to 2nd November 2022 (111 days), and 10th November 2022 to 17th July 2023 (250 days), amounting to a cumulative total of 376 days.
7. It is a settled principle that time spent in custody must be fully considered in sentencing. The omission to take into account the entirety of the remand period resulted in an error in principle, warranting the intervention of this Court.
8. Accordingly, the sentence is hereby reviewed to the extent that it shall be deemed to have taken into account the full period of 376 days spent in remand custody. For avoidance of doubt, the sentence shall run from the date of conviction to be computed by less one (1) year and eleven(11) days pursuant to section 333(2) of the Criminal Procedure Code.

RULING DATED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH 2026

D. KAVEDZA

JUDGE

