



**Fadhili v Republic (Criminal Revision E033 of 2025)
[2025] KEHC 5314 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E033 OF 2025**

DR KAVEDZA, J

APRIL 29, 2025

BETWEEN

MOSES FADHILI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of stealing contrary to section 268 as read with section 275 of the [Penal Code](#). He was sentenced to serve three (3) 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 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 22nd February 2023 and was never released on bail/ bond until his conviction and sentence. From the record, that the period was not factored in during his sentencing.
7. Guided by the law, the court is of the view that the application ought to be considered, as failure to do so would amount to denying the applicant a right due to the failure of the court to discharge an obligation bestowed upon it by law.
8. I thus allow the application and order that the sentence of three (3) years imprisonment imposed by the trial court shall run from 22nd February 2023 the date of the applicant's arrest pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 29TH DAY OF APRIL 2025

D. KAVEDZA

JUDGE

