



REPUBLIC OF KENYA



KENYA LAW
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**Otieno v Republic (Criminal Revision E024 of 2025)
[2025] KEHC 5319 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5319 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E024 OF 2025**

**DR KAVEDZA, J
APRIL 29, 2025**

BETWEEN

SIMON MANGO OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for two counts of robbery with violence contrary to section 296(2) of the *Penal Code*. He was sentenced to serve fifteen (15) years imprisonment on each count.
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 *Abamad 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 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 30th June 2017 and was never released on bail/bond until his conviction and sentence. From the record, that the period was factored in by this court in the judgment

7. delivered on 13th May 2024 and reduced the sentence by five years.

8. In the premises, the application is dismissed for lacking in merit.

Orders accordingly.

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

D. KAVEDZA

JUDGE

