



REPUBLIC OF KENYA



**Mandera & another v Republic (Criminal Revision E022 of 2025)
[2025] KEHC 5161 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E022 OF 2025**

DR KAVEDZA, J

APRIL 29, 2025

BETWEEN

AUSTINE MANDERA 1ST APPLICANT

SAMUEL KARIUKI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged and convicted for the offence of burglary contrary to section 304(2) of the *Penal Code*. They were each sentenced to serve seven (7) years imprisonment.
2. They filed the present application and an affidavit in support of the motion seeking sentence review. The arguments raised are that the trial court failed to consider the time spent in remand custody during the computation of their sentences.
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 applicants were arrested on 9th February 2024 and were never released on bail/ bond until their conviction and sentence. From the record, that the period was not factored during their 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 applicants their rights 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 sentences of seven (7) years imprisonment imposed by the trial court shall run from 9th February 2024 the date of the applicants were arrested pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

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

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D. KAVEDZA

JUDGE

