



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wambua v Republic (Criminal Revision E025 of 2025)  
[2025] KEHC 5162 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5162 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E025 OF 2025**

**DR KAVEDZA, J**

**APRIL 29, 2025**

**BETWEEN**

**NICHOLAS MULEI WAMBUA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve twenty (20) 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 Mobammed & 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 4<sup>th</sup> May 2019 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 twenty (20) years imprisonment imposed by the trial court shall run from 4<sup>th</sup> May 2019 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 29<sup>TH</sup> DAY OF APRIL 2025**

.....

**D. KAVEDZA**

**JUDGE**

