



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwaura v Republic (Criminal Revision 22 of 2023)  
[2024] KEHC 1939 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1939 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 22 OF 2023  
DR KAVEDZA, J  
FEBRUARY 29, 2024**

**BETWEEN**

**DANIEL NJENGA MWAURA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of trafficking in narcotic drugs contrary to section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994. He was sentenced to serve 8 years imprisonment in addition to the payment of a fine of Kshs.4,248,000 in default to serve an additional 1-year imprisonment. He has now filed an application seeking revision of sentence. She filed an affidavit in support of his motion. The arguments raised are that the trial court failed to consider the time she spent in reman custody during the computation of sentence.
2. 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.
3. The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to consider 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.



4. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
5. I have perused the original record and I find the trial court considered the mitigation before sentencing the applicant. The court noted that it had already considered the said period thus the sentence of 8 years in addition to payment of a fine.
6. The upshot of the above is that the application is dismissed for lacking in merit.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024**

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**D. KAVEDZA**

**JUDGE**

