



REPUBLIC OF KENYA



**Bola v Republic (Criminal Revision 94 of 2023)
[2024] KEHC 1938 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 94 OF 2023
DR KAVEDZA, J
FEBRUARY 28, 2024**

BETWEEN

MAGDALINE NATIVOI BOLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of handling stolen property contrary to section 322 (1) of the *Penal Code*. He was sentenced to serve 4 years 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 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 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.
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 taken into account 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 to four (4) years imprisonment. The court further noted that the one (1) year the accused had spent in remand custody had been taken into account.

6. The upshot of the above is that the application is dismissed for lacking in merit.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF FEBRUARY 2024

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D. KAVEDZA

JUDGE

