



REPUBLIC OF KENYA



**Juma v Republic (Criminal Revision 99 of 2023)
[2024] KEHC 3031 (KLR) (18 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3031 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 99 OF 2023
DR KAVEDZA, J
MARCH 18, 2024**

BETWEEN

ISAAC JUMA 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 (4) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve ten (10) 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 under the provision of section 333(2) of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya.
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 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 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 10 years imprisonment.
 6. The upshot of the above is that the application is dismissed for lacking in merit.
- Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 18TH DAY OF MARCH 2024

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D. KAVEDZA

JUDGE

