



**SMK v Republic (Criminal Revision 37 of 2024)
[2024] KEHC 2795 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 37 OF 2024
DR KAVEDZA, J
MARCH 19, 2024**

BETWEEN

SMK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted on four counts of the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to life imprisonment. His appeal before this court was dismissed. He applied for resentencing and his sentenced of life imprisonment was substituted with a sentence of 40 years imprisonment. He has now filed an application for sentence review. The arguments raised are that the trial court failed to consider the time 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. In addition, he is remorseful and has been rehabilitated since his incarceration.
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. From the record, the court that resentence the applicant on 8th February 2021 considered this period thus ordering that the 40 years imprisonment to run from the date of original sentence in 2012.
6. The upshot of the above is that the application is dismissed for lacking in merit.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 19TH DAY OF MARCH 2024.

D. KAVEDZA

JUDGE

