



**Adede v Republic (Criminal Revision 27 of 2024)
[2024] KEHC 3030 (KLR) (18 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 27 OF 2024
DR KAVEDZA, J
MARCH 18, 2024**

BETWEEN

ERICK MACHAYO ADEDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted on four counts of the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. He was sentenced to serve 20 years imprisonment on each count. The sentences were to run concurrently. He has now filed an application seeking revision of sentence. 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.
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 *Ahamad 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 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 applicant was arrested on 7th August 2014. He was arraigned in court for take plea and was in custody for the entirety of his trial until his conviction on 13th July 2018. He, therefore, spent 3 years 11 months and 6 days in remand custody. From the record, it is clear that the period was not factored in during his sentencing. 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.
6. I thus allow the application and order that the applicant's sentence shall be computed to be less by 3 years 11 months and 6 days and to run from the date of his conviction.

Orders accordingly.

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

D. KAVEDZA

JUDGE

