



Jarso v Republic (Criminal Revision 1 of 2023) [2024] KEHC 6364 (KLR) (27 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 1 OF 2023
DR KAVEDZA, J
MAY 27, 2024**

BETWEEN

WAQO JARSO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and after a full trial convicted for the offence of attempted defilement contrary to section 9(1) as read with section 9(2) of the [Sexual Offences Act](#), No. 3 of 2006. He was sentenced to serve 10 years imprisonment.
2. In his application before court to review the 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. In addition, he is remorseful and has been rehabilitated since his incarceration.
3. 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.
4. 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 Mobammed & 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.



5. 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.
6. From the record of the court, the applicant was arrested on 20th May 2017. He was granted a bond of KShs. 300,000 after plea taking. However, the trial was conducted while he was in custody until his conviction on 30th May 2018. He, therefore, spent 12 months 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.
7. I thus allow the application. The sentence shall run from 20th May 2017 pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MAY 2024

D. KAVEDZA

JUDGE

