

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.38 OF 2018

IRUNGU KIBE JOSEPH.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Irungu Kibe Joseph was convicted of the offence of **breaking into a building and committing a felony** contrary to **Section 306** of the **Penal Code**. He was sentenced to serve eighteen (18) months imprisonment. He was further convicted of **being found in possession of a firearm** contrary to **Section 89(1)** of the **Penal Code**. He was sentenced to serve seven (7) years imprisonment. The custodial sentences were ordered to run concurrently. The trial court stated that it had taken into consideration the period that the Applicant had been in remand custody. The Applicant is of the contrary view. He applied to this court to have that period that he was in remand custody taken into account. This court has perused the proceedings of the trial court and notes that the trial court had the discretion to sentence the Applicant. The exercise of that discretion can only be interfered with by this court if it is established that the sentence was either very lenient or harsh and excessive. The decision can also be upset if it is established that the trial court did not take into account all the relevant circumstances of the case, including the mitigation of the accused (See **Ahmad Abolfathi Mohammed & Another -vs- Republic Criminal Appeal No. 135 of 2016** (unreported)).

In the present application, it was clear to this court that the trial court did take into consideration all the relevant factors before sentencing the Applicant to serve the custodial sentence. The trial court took into consideration the period that the Applicant was in remand custody. That is reflected in the sentence that was meted out on the Appellant. It also took into account the serious nature of the offences that the Applicant was facing. The trial court correctly observed that proliferation of the illegal firearms in the hands of criminals is a threat to the peace and security of members of the public. The custodial sentence imposed by the trial magistrate fits the crime.

In the premises therefore, the application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF JUNE 2018

L. KIMARU

JUDGE