

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 82 OF 2017

DAVID KARIUKI WACHIRA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

By Notice of Motion application dated 15th March, 2017, the Applicant prays for revision of his sentence so that the period of about 3 years he spent in custody is deducted from his sentence.

He was charged with the offence of attempted murder but was found guilty for the offence of causing grievous harm contrary to **Section 234 of the Penal Code**. He was sentenced to serve 25 years imprisonment on 25/10/2003. In passing the sentence, the trial court in part delivered itself as follows:

“The court has treated the accused as a first offender and has noted the period he has been in custody and also his mitigation plea. The court however also notes the extent of the injuries the complainant sustained which left her disfigured and also notes the suffering the complainant underwent.....”

No doubt from the above passage the court took into account the period the Applicant has spent in remand as required by **Section 333(2) of the Criminal Procedure Code** and **Sections 7.10 and 7.11 of the Sentencing Policy Guidelines**. There is no provision in law that the period spent in custody must be deducted from the sentence (*emphasis mine*). Each case must be considered on its merit in deciding whether or not his period should be deducted from the sentence.

Section 7.12 only references that where an accused was charged with a misdemeanor and had been in remand for a period equal to the sentence or more, he shall be discharged under **Section 35(1) of the Penal Code**.

In the present case, the Applicant was found guilty of a felony. The sentence provided under **Section 234 of the Penal Code** is of up to life imprisonment. The circumstances of the case were grave. The Applicant poured acid on the complainant. The complainant was in hospital for a period of more than one year. She suffered permanent disfigurement which she will have to live with for the rest of her life. My view is that the sentence passed was not only reasonable but lenient in the circumstances. Further, the trial magistrate bore in her mind the period the Applicant has spent in custody before passing the sentence. This is not a case in which the court would be inclined to reduce the sentence. The application is unmerited. I dismiss it accordingly.

Dated and Delivered at Nairobi this 20th day of November, 2017.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant present in person*

2. *M/s Akuja for the Respondent.*