



REPUBLIC OF KENYA



KENYA LAW
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**Hamud v Republic (Criminal Appeal E039 of 2022)
[2023] KEHC 21707 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E039 OF 2022
JN ONYIEGO, J
JULY 28, 2023**

BETWEEN

MOHAMED ABDILLE HAMUD APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the sentence and conviction by Hon. Mugendi Nyaga (SRM) in SPM's Court in Wajir Criminal Case No.521 of 2018 delivered and delivered on 06.01.2019)

JUDGMENT

1. The appellant herein was charged with another with the offence of being in possession of ammunition without holding a firearm certificate in force at the time Contrary to Section 4(2) (a) as read with Section 4(3) (a) of the *Firearms Act*. Particulars of the offence were that on 6th day of December, 2018 in Boji Abdille Gulbet area of Wajir South Sub –County within Wajir County, were found in possession of 25 live rounds of caliber 7.62 by 39mm in contravention of the said Act.
2. Count two, he again with his co-accused were found in possession of a specified firearm without a firearms license contrary to Section 4 (1) (a) of the *Firearms Act*. Particulars of the offence were that on the 6th day of December, 2018 in Boji Abdille Gulbet area of Wajir South Sub – County within Wajir County, were found in possession of a specified firearm namely AK -47 serial number MFI 732 with one magazine in contravention of the said Act.
3. Upon closure of the trial, he was convicted and sentenced to 7 years' imprisonment in Count 1 and 14 years Count 2 to run concurrently. Aggrieved by both conviction and sentence, he filed Cr. Appeal No. 13 of 2019 which was dismissed on 7th November, 2019. Undeterred, he filed Misc. Application No. E016 of 2020 seeking review of the sentence. The application was heard and the court delivered its ruling dismissing the application for lack of jurisdiction to review its own orders.



4. The appellant went ahead and filed this appeal seeking review of the same sentence. The Respondent opposed the application stating that the appeal amounts to abuse of the court process. Learned counsel submitted that another appeal having been heard and determined the same cannot be entertained by way of review.
5. I have considered the application herein which is disguised as an appeal. There is no doubt that the appellant has approached the court three times in attempt to set aside his conviction and review of his sentence.
6. In two previous appeals, the court did dismiss the appeal. In his appeal he is seeking leniency on grounds that; he has reformed; he is remorseful; he is ready to spread the Islamic Religion and that he will abide by the law.
7. The appellant is asking this court to set aside its two previous orders in his favour. This Court is functus officio. It has no power to grant the orders sought. The appellant ought to have approached the Court of Appeal. Accordingly, the application is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 28TH DAY OF JULY, 2023

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J.N. ONYIEGO

JUDGE

