



REPUBLIC OF KENYA



**Kobia v Republic (Criminal Appeal 171 of 2019)
[2022] KEHC 16762 (KLR) (Crim) (19 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16762 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL APPEAL 171 OF 2019**

CW GITHUA, J

DECEMBER 19, 2022

BETWEEN

LEONARD KOBIA APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the Judgement in Makadara Chief Magistrate's Criminal
Case No. 133 of 2017 dated 25th July 2019 Hon. Kithinji A.R SPM)*

JUDGMENT

1. The appellant, Leonard Kobia, was charged in two counts with the offences of failing to ensure safety or reasonable precaution of a firearm and fourteen rounds of 9mm caliber ammunitions contrary to section 18 (3) (4) of the *Firearms Act*, Cap 114 Laws of Kenya.
2. In the first count, the particulars alleged that on or about January 8, 2017 at Amazon Village within Embakasi Division in Nairobi County, while having in his possession a firearm namely, a ceska pistol serial number F 5959, the appellant failed to take all reasonable precautions to ensure that the firearm was not stolen, lost or was available to any other person not lawfully entitled to possess it.
3. In count 2, it was alleged that on the same date and place, while having in his possession 14 rounds of 9mm calibre ammunitions, he failed to take reasonable precautions to ensure that the said ammunitions were not stolen, lost or were available to any other person not lawfully entitled to possess them. .
4. After a full trial, the appellant was convicted in both counts and was fined Ksh 10,000 in default to serve 6 months imprisonment in each count. He was dissatisfied with his conviction hence this appeal. He did not challenge the sentence imposed on him by the trial court.



5. In his petition of appeal which was wrongly described as a memorandum of appeal, the appellant advanced three grounds of appeal in which he complained that the learned trial magistrate erred in law and fact by; failing to find that the prosecution had not proved its case against him beyond any reasonable doubt; failing to find that the defence of self defence and necessity had been established and in rejecting his defence without giving cogent reasons.
6. At the hearing, both parties agreed to have the appeal prosecuted by way of written submissions.
The appellant's submissions were filed on April 4, 2022 while those of the respondent were filed on June 23, 2022.
In his submissions, the appellant contended that the prosecution had failed to prove beyond doubt that he had intentionally lost the firearm assigned to him. He submitted that the prosecution gave hearsay evidence which was inadmissible and could not therefore prove his guilt as charged. He urged me to find merit in the appeal and allow it as prayed.
7. The respondent through learned prosecuting counsel Mr Ismael Kiragu supported the appellants conviction and urged the court to note that the appellant in his defence had admitted to having left the firearm loaded with the rounds of ammunitions described in count 2 in vehicle registration number KCA xxx which did not meet the threshold of safe custody as defined in section 18(5) of the Firearms Act. Counsel submitted that the charges in each count had been proved against the appellant beyond any reasonable doubt and invited me to dismiss the appeal for lack of merit.
8. This being the first appellate court, I am enjoined to consider afresh and exhaustively evaluate all the evidence presented before the trial court and arrive at my own independent conclusions. In doing so, I am required to remember that I neither saw nor heard the witnesses during the trial and give due allowance for that disadvantage. See: *Okeno v Republic* [1972] EA 32; *Soki v Republic* [2004] 2KLR 21.
9. Having given due consideration to the grounds of appeal, the rival written submissions and the evidence on record, I find that the only issue arising in this appeal for my determination is whether the prosecution discharged its burden of proving the two charges preferred against the appellant beyond any reasonable doubt.
10. At the outset, I wish to note that it was not disputed that the appellant was a police officer at the material time attached to Langata Police Station and that he had been issued with a firearm S/No FS 5959 Ceska Pistol loaded with 14 rounds of 9mm ammunitions on December 17, 2016.
According to the evidence of PW2 Sgt Abraham Simiyu, which was not disputed, from the date the appellant was issued with the firearm, he declined to either return it or renew its registration as required of police officers issued with firearms.
The appellant confirmed in his statement in defence that he still had the firearm on January 8, 2017 when it was stolen from motor vehicle registration no KCA xxxM by unknown people.
11. The issue which fell for determination before the trial court which the learned trial magistrate fully appreciated was whether the appellant having been lawfully issued with the firearm loaded with several rounds of ammunitions had complied with the provisions of section 18 of the Firearms Act which required persons who were in possession of firearms or ammunitions to keep them securely in safe custody and to take all reasonable precautions to ensure that the same were not lost or stolen or made available to any person not lawfully entitled to possess them.
12. A reading of the trial court's judgment shows clearly that the learned trial magistrate meticulously analysed the evidence adduced by both the prosecution and the defence in its totality and after applying



the relevant law concluded that the appellant was negligent by placing the firearm under the driver's seat and leaving the vehicle unattended as he went to escort his informers and that it is this negligence which caused loss of the firearm.

13. I am unable to fault the learned trial magistrate's finding given the definition of what constitutes safe custody of firearms as set out in section 18 (5) of the *Firearms Act* (the Act). The provision defines safe custody as follows;

“Safe custody means in the physical custody of the licensee or a safe approved for that purpose by the licensing officer.”

By the appellant's own admission, he did not have physical custody of the firearm when he went to escort his informers. Instead, he left it under the driver's seat in an unattended motor vehicle which clearly was not one of the places envisaged in section 18(5) of the Act. The vehicle was obviously not a safe approved by the licensee officer.

14. For the foregoing reasons, I am satisfied that the learned trial magistrate properly interrogated the evidence presented before him and came to the correct conclusion that the prosecution had proved its case against the appellant in each count beyond any reasonable doubt. In the circumstances, it is my finding that this appeal lacks merit and it is hereby dismissed.

DATED, SIGNED and DELIVERED at KISII this 19th day of December 2022.

C.W. GITHUA

JUDGE

In the presence of:

Ms. Wanjiru for the Appellant

Ms. Adhiambo for the State

Ms. Karwitha Court Assistant

