



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CRIMINAL APPEAL NO.218 OF 2017**

**(Appeal Originating from Nyahururu CM's Court Cr.No.2823 of 2015 by: Hon. S.N., Mwangi – S.R.M.)**

**PETER KIPKURUI ROTICH.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

**Peter Kipkurui Rotich**, the appellant herein was the first accused in CMCr.2823/2015 where together with two others, faced two charges; namely:

Count 1: Being in possession of a firearm contrary to section 4A(1)(a) of the Firearms Act Cap 114 Laws of Kenya.

It was alleged that on 29/10/2015 at Ol Moran Trading Centre in Laikipia West Sub County were jointly in possession of an AK-47 rifle Serial No.MN7553 and bold No.3080 without a firearm certificate on board Motor Cycle Registration No.KMCD 769P.

In Count II, they were charged with possession of ammunition contrary to section 4(1)(a) of the Firearms Act in that they were found jointly in possession of 8 rounds of 7.62 mm special calibre ammunitions without a firearm certificate, on board Motor Cycle Registration No.KMCD 769P.

After a full hearing, the court found the appellant and second accused to be guilty of the two offences and each was sentenced to serve 2½ years imprisonment on each count.

The appellant filed this appeal challenging sentence only. His grounds of appeal are that he is a first offender, a father of eight children and the sole breadwinner; that he takes care of his 83 year old grandmother; that he has lost all his livestock, the source of his livelihood; that his children have been sent out of school and that he has been of good conduct while in prison. He therefore prays for a noncustodial sentence.

The learned counsel for the State Mr. Maroro opposed the appeal contending that the sentence to which the appellant was sentenced is illegal and unlawful; that for an offence of possession of a firearm, the minimum sentence is 7 years while the maximum sentence is 15 years imprisonment. For possession of ammunition, the minimum sentence is 5 years while the maximum sentence is 10 years. Counsel urged the court to enhance the sentence to accord with the law.

I have considered the grounds of appeal which were generally mitigation. The appellant raised some of those grounds before the trial court. As pointed out by the State Counsel, the sentence meted out on the appellant is illegal. The law provides for both minimum and maximum sentences for the offences that the appellant faced. There is no reason given by the court why it did not comply with the provisions of the law because the appellant did not have a certificate therebefore. For that reason, I set aside sentence for being unlawful.

I notice the court was very much aware of the minimum and maximum sentences as provided under Section 4(3) and should have complied.

I hereby sentence the appellant to 7 years imprisonment on Count 1 and 5 years imprisonment on Count II, all being the minimum sentences under Section 4(3). The court's discretion can only be exercised within the minimum and maximum sentences provided under the law.

I direct that the sentences do run concurrently from the date the appellant was sentenced on 31/3/2017.

It is so ordered.

**Dated, Signed and Delivered** at **NYAHURURU** this **30<sup>th</sup>** day of **April**, 2019.

.....

**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Rugut – Prosecution Counsel

Soi - Court Assistant

Appellant - present