



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 9 OF 2018

(Being an appeal from the decision of Hon. Paul Biwott in Criminal case No. Kitale CMCRC. 2761 of 2017)

DAVID BIKETI MURUNGA..... APPELLANT

VERSES

REPUBLICRESPONDENT

JUDGEMENT

1. The Appellant was convicted and sentence to serve seven years' imprisonment with the offence of **being in possession of ammunition contrary to Section 4(1) (2) (a) as read with Section 4(3) (a) of the Firearm Act Cap 114 Laws of Kenya.**
2. The particulars of the charge were that **on the 17th day of July 2017 at Liyavo junction at Matisi area in Kitale township within Trans Nzoia County was found being in possession of 200 rounds of 7.62 mm special ammunitions without a firearm certificate.**
3. The Appellant has filed this appeal against the conviction and sentence. When this matter came up for hearing the court ordered the same to be disposed by way of written submissions.
4. The gist of the appeal centres on the fact that the court arrived at the decision based on contradictory evidence and that the informer was not called to testify.
5. The evidence as was presented during trial merits consideration. **PW1 PAUL WAFULA KABURU** a police reservist testified that on the material day he was at the police station at Kitale when he was approached by someone who told him that he had seen a man at Matisi area who was selling bullets. He was given 2 police officers and a vehicle and they went to the scene where they found a man carrying a black bag. He was arrested and found with the bullets numbering 200.
6. On cross examination by the accused he said that he did not know him and that he did not have a bicycle.
7. **PW2 CPL. LENOX BARAZA** also from Kitale police station and the Investigating Officer in this case received the accused when he was brought at the station. He prepared an exhibit memo and sent them for analysis.
8. **PW3 I.P. REUBEN BETT** a ballistic expert examined the ammunitions and produced his report as well as the bullets. The items had been taken to him by PW2.
9. When placed on his defence the Appellant gave unsworn evidence denying the charge. He said that he was called by one ALFRED OKIRING from Endebbes where they agreed to meet at around 1pm. He offered him a ride using his bicycle and while on the way he told him that he was going to collect his debt. He was carrying a luggage on the bicycle which was a bag and a sickle.
10. On the way he went to collect his debt and left the Appellant with the bicycle but delayed coming back. When he came back aboard a motorcycle he was with someone. He approached them and the said Okiring removed a bullet from his jacket and told him to take to where the rest were. When he opened the bag he saw the bullets and the police arrived and arrested him. He generally denied the charge.

ANALYSIS AND DETERMINATION

11. Having heard the appellant and the homemade grounds which almost borders on mitigation, the duty of this court is to analyse afresh the evidence as presented with a view of arriving at a new and independent finding with the caution that it did not have the benefit of the trial court. (see **OKENO V. REPUBLIC 1972. E.A 32**)

12. The question of being found in possession of the ammunition was not disputed even by the appellant in his unsworn evidence. He admitted so save to state that the same were given to him by one Okiring. The Appellant did not bother to call the said fellow and most importantly he did not permit the Respondent to cross examine him by virtue of the fact that he gave unsworn evidence which in this case was of not so much probative value.

13. There was sufficient evidence by the prosecution that the bullets were found in possession of the appellant. He was unable to explain where he found them or why he was in possession. The unsworn evidence did not aid the appellant as it did not displace the fact that he was in possession of the ammunitions illegally.

14. In his final ground of appeal, the Appellant has pleaded that he was a first offender and pleaded that he be released to serve under community service order.

15. This appeal in my view is not meritorious at all. The appellant was found red handed so to speak with the bullets. He was unable to explain how it came into his possession. The man called Okiring was not called by the Appellant to testify even on his behalf. The police had no obligation of calling their informer as the Appellant submitted.

16. The 200 rounds of ammunition are not chicken feed as they can cause great damage. The upshot of my findings is that the appeal is hereby dismissed.

Dated, signed and delivered at Kitale this 25th November, 2019.

H. K. CHEMITEI

JUDGE

25/11/19

In the presence of:-

Mr Omooria for the Respondent

Court Assistant – Kirong

Appellant – Present

Judgment read in open court.