



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL CASE NO.35 OF 2017**

**ABDI GODANA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon. E.Ngigi – Senior Resident Magistrate dated 17<sup>th</sup> February, 2017 in Nanyuki Chief Magistrate Court Criminal Case No. 724 of 2012)*

**JUDGMENT**

1. **ABDI GODANA** was charged before Nanyuki Chief Magistrate's court with the offence of being in possession of firearm, on **count one** and of being in possession of ammunition on **count two**, without a certificate **Contrary to Section 4 (1) as read with Section 4 (3) of the Firearms Act**. On conviction he was sentenced to 7 years on each count with those sentences running concurrently. He has filed this appeal against sentence.
2. The appellant's submissions in support of his appeal amounts to mitigation – but it is mitigations which are not truthful. He mitigated that he had eight children who solely depend on him because; he is an orphan; and his wife died in the year 2007.
3. That mitigation goes contrary to his defence evidence by Ada Godana, D W 3 his sister. D W 3 in evidence stated that on the day of appellant's was arrested 9<sup>th</sup> July 2012, appellant's wife and children were present.
4. From that evidence it becomes clear that appellant's wife did not die in the year 2007, as he submitted.
5. That aside, it is important to note, as was correctly submitted by the Principal Prosecution Counsel Mr Tanui for the respondent, that the sentence passed by the trial court was the bare minimum sentence set out in **Section 4(3) of the Firearms Act**. This Court therefore cannot interfere with the trial court sentence. To do so would be unlawful.
6. In view of the above the appeal against sentence is hereby dismissed. **The trial court's sentence is confirmed.**

**Dated and Delivered at Nanyuki this 18<sup>th</sup> April 2018**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant Abdi Godana

For state: .....

Language .....

**COURT**

Judgment delivered in open court

**MARY KASANGO**

**JUDGE**