



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

(POSSESSION OF A FIREARM)

H.C. CR. A. CASE NO. 182 OF 2016

(CORAM: R. E. ABURILI – J.)

BYRON OMONDI OTIENO.....APPELLANT

VERSUS

STATE.....RESPONDENT

(Being an appeal against both the conviction and the sentence dated 7.10.2016 in Criminal Case No. 362 of 2016 in Ukwala Senior Resident Magistrate's Court before Hon. G. ADHIAMBO – SRM)

JUDGMENT

1. On 6th October, 2016 the Appellant herein **Byron Omondi Otieno** was found guilty of the offence of **being found in Possession of a firearm without a permit**, by Hon. G. Adhiambo, SRM vide Ukwala, SRM Cr. Case No. 352 of 2016. The Appellant was sentenced to serve 10 years imprisonment. Being dissatisfied with the conviction and sentence, the Appellant lodged this appeal complaining that:

(1) The learned trial Magistrate erred in Law and fact in convicting the Appellant without considering that the charge sheet was defective.

(2) The trial Magistrate erroneously convicted the Appellant without considering that the prosecution case was not proved beyond reasonable doubt due to failure to summon some of the crucial and essential witnesses.

(3) That the trial Magistrate erred in Law and in fact while convicting the Appellant by failing to find that the Law was not complied with when the charge sheet was amended.

(4) That the defence was not given due consideration.

2. The Appellant who appeared in person filed and relied on his written submissions canvassing each of the above grounds.

3. On the ground that the charge sheet was defective, the Appellant submitted that there was irregularity in the particulars of the offence as far as the serial number of the firearm in question was concerned. It was submitted that initially, the charge illustrated in the particulars of offence that the serial number of the alleged recovered gun was an AK 47 Rifle Serial No. UG PUG Pol 2X047C 103686. However, that, that was different from the serial number stated by PW3 at P.17 that it was S. No. UG POL 2X0473C103686 which was the gun taken to the ballistics expert.

4. According to the Appellant, there were inconsistencies because the gun that was produced in Court bore a different serial number UGPUGPOL 2X0743C IU3686 and 3 rounds of ammunition. In the Appellant's view, it was not clear how many guns were recovered and which one exactly was found in his possession. He asserted that the errors and omissions cannot be regarded as minor irregularities but substantial errors which cannot be cured by Section 382 of the Criminal Procedure Code as the same have occasioned a miscarriage of justice.

5. The appellant relied on **Yongo Vs. R 9 (1983) KLR** where it was held that a charge is defective under **Section 214 (1) of the Criminal Procedure Code** where it does not accord with the evidence given at the trial. It was therefore submitted that the charge sheet was defective and so the Appellant should be given the benefit of doubt.

6. On the second ground that the trial Court erroneously convicted the appellant in the absence of proof of the Prosecution's case beyond reasonable doubt in that some of the crucial and essential witnesses did not testify, the appellant submitted that there was no independent

witness to corroborate allegations by the Police over recovery of the firearm and that nobody was summoned to come and testify over the alleged recovered gun yet the Appellant was not alone in his homestead. The Appellant claims that the Police did not summon his wife, brother or anybody else to ascertain what transpired on that night. Reliance was placed on **Bukenya Another Vs Uganda. Cr. A 6811972 EACA** where it was held that the Court has a right and duty to call witnesses whose evidence appear essential to just (sic) decision of the case.

7. It was further submitted that there was no independent witness who signed the inventory form and that the Appellant was harassed, intimidated and threatened to sign blank papers which were meant to fix him in the alleged offence. He therefore urged the Court to disregard the trial Court's findings of the case and find them insufficient and unsatisfactory in law.

8. On the 3rd ground that the trial Court erred in law and in fact in convicting the Appellant by failing to find that the law was not complied with when the charge sheet was amended, it was submitted that during the trial, an amendment was done due to an irregularity in the charge sheet but that the trial Court did not remind the Appellant of his right to recall witnesses after the amendment, which, according to the Appellant, is contrary to **Section 214 (1) of the Criminal Procedure Code**.

9. On the last ground that the Appellant's defence was not considered. It was submitted that despite giving his sworn defence it was not considered. The appellant submitted that despite giving his worn defence validly explaining what transpired on the fateful night, and called a defence witness who was present when the search was done, exonerating him from the alleged recovery of the gun, the trial Court relied on mere assertions without proof. Reliance was placed on **Ndege Maragwa V R (1964) EACA 156** where the Court held that in Criminal cases, the burden of proof is on the prosecution throughout and that it is the duty of the trial Court to look at the evidence as a whole and establish whether the burden was discharged, which, according to the Appellant, was not done in this case. The Appellant therefore urged this Court to overturn the conviction and acquit him of the offence because he was convicted on insufficient evidence.

10. In opposing the appeal, the Respondent State through Ms. Odumba, the Prosecution Counsel submitted that the charge sheet was not defective as the Court allowed the prosecution to substitute the charge sheet to insert the correct serial number of the firearm that was produced as an exhibit. On allegations that the Prosecution failed to call crucial witnesses, the prosecution Counsel submitted that the prosecution called all relevant witnesses and that the Appellant does not mention who the crucial witnesses were.

11. It was further submitted that the charge against the Appellant was proved beyond reasonable doubt and that the trial Court carefully analyzed the case and dismissed the defence.

12. Prosecution Counsel urged the Court to dismiss the appeal and uphold the conviction and sentence.

13. This being the first appeal, this Court is required by law to re-analyze and re-evaluate the evidence adduced before the trial Court and arrive at its own independent conclusion, while bearing in mind the fact that I did not have the advantage of seeing or hearing witnesses as they testified. See **OKENO VS. REPUBLIC 1972 EA 32** where the Court of Appeal stated:

*“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination. (See **PANDYA VS. REPUBLIC (1957) EA 336**) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (See **SHANTILAL M. RUWALA VS. REPUBLIC (1957) EA 570**).*

*“.....it is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw it's own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses. (See also **PETER Vs. SUNDAY POST (1958) EA 424**.”*

14. The Prosecution in the trial Court called three 3 witnesses whose evidence is summarized as hereunder. PW1 No. 1989123013 Senior Sergeant Levis Njoroge attached to Ugunja A.P. Camp testified that on 25.5.2016 he was on patrol duties at Malira Village with APC Shadrack Wanjala, APC Peter Gitaro and APC Benard Sange when at about 1.00 a.m. they received information from their informer that one person was in possession of a firearm. He testified that their said informer directed them to where the suspect was and as they entered the compound of the suspect, they found him outside going round his house. They moved close to the suspect and identified themselves to him and requested him to allow them to conduct a search at his house. They entered his house and carried out a search after the suspect took them to his own house, albeit there were many other houses in the compound. In the process, they recovered the firearm wrapped in a sack and hidden beneath the suspect's mattress that was on the bed. The house was a single room. Present in that house were his wife and children. When they asked the suspect/appellant what the riffle was used for, he replied that it was used for sporting which they understood to mean that he used it to commit robberies. The Accused was arrested and taken to the Police Station.

15. The witness further testified that before the Accused was escorted to the Police Station, he told them that he could not be taken to the Police Station alone and that he offered to take them to where his accomplices with whom he committed robberies were. The Police asked the suspect as to where the ammunitions were and he led them back to his house and he directed his wife to avail a certain jacket and he revealed that the ammunitions were in the right pocket of the jacket. PW1 and his colleagues recovered 3 ammunitions from the right pocket of the Jacket. There was a solar light in the Accused's home and they also used torches to illuminate the area.

16. PW1 further narrated how the Accused led them to the home of his accomplices in Kayombi and Nyamasaria Villages. They arrested his accomplices and took them to Ambira Chief's Camp and called DCIO Ugunja who came with Officers from Siaya and took away the suspects.

17. PW1 stated that he had never known the Appellant before. He identified the riffle AK Sno. UG POL 0473CIO3686 and 3 rounds of ammunition of 7.62mm caliber.

18. In cross-examination PW1 reiterated his testimony in-chief and stated that as they searched the Accused Person's house, his wife was present and that she wept telling the Accused that she had warned him severally but that he used to tell her that he was the head of the house.

19. PW2 No. 2002051227 AP Shadrack Simiyu Wanjala of Ugunja AP Camp testified on oath that on 25.5.2016 they were on patrol duties and that at about 1.00 a.m. they received information that one suspect was in Ugunja. Led by SS. James Njoroge PW1, APC Benard Sang and APC Peter Gitau, they went for the suspect in Mahira Village within Ambira Sub-location. They approached a homestead and saw a person walking outside a house in a compound wearing a white vest. They hurriedly entered the compound and found the person. They were in Police uniform. The person hurriedly greeted them and they requested to conduct a search in his house and he led them into one house albeit there were 6 houses in that compound. Inside the house were the suspect's wife and children. They carried out a search and using the lamp and bright torches which they carried with them, they noted a sack beneath his bed under the mattress and as they checked they found something wrapped in it using a greenish jacket. On removing the wrap, they found an AK-47 Riffle and the Accused's wife remarked that it was the Accused who knew about the gun. They later questioned the Accused on the whereabouts of the ammunitions and the wife told them to check in a certain jacket which they did and recovered 3 ammunitions in the right pocket of the jacket. That the Accused said that the gun was not his but belonged to other people he used to work with. He led them to his accomplices' homes and the Police arrested the accomplices. The Accused was escorted to CID offices for more investigation. The accomplices were Eric and Maurice. The AK-47 Riffle and 3 ammunitions were identified. The rifle was S/no. UG POL 0473CIO3686. The witness never knew the Accused before the material date.

20. In cross-examination by the Appellant, PW2 reiterated his testimony in Chief. PW2 was later recalled for further cross-examination by the Appellant. PW2 stated that the informer was not a witness in the case. He stated that as they recovered the gun, the Accused Person's wife and Children stood beside the bed. He stated that the Accused signed the inventory record confirming that he had admitted that the gun was recovered from his house. He said that they had no camera so they did not take any photos. He stated that they never used to notify Assistant Chiefs when on Patrol. He stated that they were informed that the Appellant went to school on and off as a cover up and that it was the Appellant who mentioned his accomplices.

21. PW3 No. 233456 Chief Inspector Kirwa of Ugunja Divisional Headquarter testified on oath and stated he investigated the case after receiving information on 25.5.2016 that A.Ps from Ambira had arrested some suspects while they were on Patrol duties at Mahira Village at around 1.00 a.m. and on information from an informer. He stated that he filed the exhibit memo in respect of the recovered AK 47 Riffle SNo. UGPOL 2X0473C103686 and labelled it together with 3 ammunitions of 7.62 m.m. caliber and send them to the ballistics expert, Nairobi for examination. That he later received a report from the examining officer. He produced the exhibit memo, and report as exhibits. The Riffle and 3 ammunitions were also produced as exhibits. This was with leave of Court as the ballistics expert was said to be away and that it would occasion unreasonable delay to procure his attendance.

22. PW3 confirmed that from the ballistic expert's report, the firearm was capable of being fired and that it was a firearm under the **Firearm Act, Cap 114 Laws of Kenya**.

23. PW3 further stated that the ammunitions recovered and tested were incapable of being fired in their condition but that they are ammunitions as defined under the **Firearms Act Cap 5 Laws of Kenya**.

24. PW3 on cross-examination stated that he did not know the Appellant before and that the Administration Police who had testified in the case were independent witnesses. He denied that the A.Ps recorded false statements. He denied being the arresting officer. He stated that before the amendments to the charge sheet, 2X was missing.

25. In re-examination the witness stated that he never knew the Appellant before and that he had no grudge with the Appellant.

26. At the close of the Prosecution case the trial Court placed the Appellant on his defence. The Appellant testified on oath and called one witness, his wife who was present during his arrest. The Appellant denied being found in possession of the firearm. He stated that he was a form 4 student at St Peters Ramba and that on 25.5.2016 he was at his home sleeping when he heard sounds of iron sheets and on checking he realized that they were people. He checked and found them to be in Police Uniform with guns. They told him that he was ill mannered after he introduced himself to them. They asked him to accompany him to the Police Station. They beat him up when he inquired as to why they could not allow him to go to the Police station during daytime.

27. He denied that any firearm was recovered from him and stated that he did not know how to use a gun. He maintained that the charges were a frame up.

28. DW2 Immaculate Atieno Ooko testified on oath and stated that on 25.5.2016 at 1.00 a.m. she was asleep with her 8 weeks old child when she was awakened by many people in her house. They removed everything from the bed and placed items on the floor. They then told her that her husband was bad and that they were taking him to Ambira.

29. In cross-examination she stated that when the people went to their house, her husband had gone out to urinate leaving her inside with her five children. She stated that when the Police searched their house they found nothing. She also stated that when her brother-in-law came back at 3.00 p.m. and asked her whether Byron owns a gun or whether he was a student she told him that Byron goes to school but that, that term he had not gone to school for lack of fees and that Byron had already sold a gun and that she was certain he would go back to school.

30. The trial Magistrate after carefully and in a detailed manner, analyzing the evidence for the Prosecution and the defence, was satisfied that the Prosecution had proved its case against the Appellant beyond reasonable doubt and convicted and sentenced the Appellant to serve 10 years imprisonment after considering his mitigation and the fact that he was a first offender.

31. In her determination, the trial Magistrate framed one issue namely ***"Whether the accused person herein was on 25.5.2016 at around 1.00 a.m. found in possession of a firearm namely AK 47 Riffle SNo. UG. PUG POL 2X0473C 103686 and 3 rounds of ammunition of 7.62 mm without a firearm certificate permit or other lawful justification."***

32. In material particulars, the trial Magistrate found that the error in the charge sheet that led to the amendment of the charge was a genuine error and that it does not mean that the rifle was different from the one which was recovered from the Appellant. Further, that the witnesses who testified were consistent. She found them to be credible. She also found that there was no dispute that a search was conducted in the Accused's house and that albeit the Accused and his wife DW2 deny that anything was recovered, the Accused signed an inventory of what was recovered from his house. The trial magistrate dismissed as an afterthought the Appellant's claim that he was beaten and forced to sign an inventory of the items recovered from his house on the material date as he never raised such issue when PW1 and PW2 who arrested him were testifying or when he was taking the plea. On allegations that the informer knew him and had a grudge against him, the trial Court dismissed that allegation as lacking proof. She further found that the Appellant never proved that he had a firearm certificate permit and neither did he provide any lawful justification for its possession with 3 rounds of ammunition. She therefore was persuaded beyond doubt that the Appellant was guilty as charged and convicted him accordingly as per Section 215 of the Criminal Procedure Code.

33. Having analyzed and re-evaluated the evidence and the judgment of the trial Court as required by Law and as espoused in **Okeno V. R. [1972] E.A. 32 and Kariuki Karnaja V. R. (1986) KLR 190**, I now proceed to determine the merits of the grounds of appeal as framed and submitted by the Appellant.

34. On allegations that the charge sheet was defective, the Appellant claims that the charge contained a different serial number of the firearm and that on amendment of the charge, the trial Court did not give him an opportunity to recall the witnesses for further cross-examination which occasioned him a miscarriage of justice as there were inconsistencies in the evidence adduced concerning the serial number of the firearm which he suspects was changed.

35. I have perused the record and I observe that the 1st charge sheet dated 10.6.2016 states that the serial No. was UG/POL1473C103686. However, on 16.8.2016 after PW1 had testified and PW2 was in the process of testifying, the Prosecution sought leave of Court to amend the charge sheet to correct the serial No. of the firearm which application was allowed. The serial No. on the substituted charge sheet dated 16.8.2016 reads UG PUG POL 2X047 3C103686. The trial Magistrate in allowing the application for amendment of the charge sheet when the Appellant objected saying

“they have changed the firearm” Stated that ***“the amendment will not be prejudicial to the Accused as the Accused will have an opportunity to cross-examine witnesses and the Court will make a finding whether the witnesses are referring to a different firearm on the same firearm. The Prosecution have a right to amend the charge sheet. They have given plausible reasons as to why the charge sheet should be amended. The application is allowed.”***

36. This Court further observes from the trial record that after the amendment of the charge and after PW2 had been recalled and cross-examined and PW3 testified and cross examined, the trial Magistrate at P.17 on 1/9.2016 observed that the Rifle was ASK-47 serial NO. 2X0473C103696 before admitting it is an exhibit.

37. The form that submitted the details of the Rifle to the ballistic expert and the Ballistic Expert's report also as produced cited the serial No. UG POL 2X0473C103686, as being the Serial Number quoted by the trial Court at P. 13-14 of the judgment. I have read the judgment of the trial Court and at P. 13 & 14 it cites SNO UG POL 2X0473C103686 and the same SSN is reproduced at P.15 line 17 of the judgment.

38. The trial Court satisfied itself that PW1, PW2 and PW3 were credible witnesses and that they gave consistent testimonies. She saw and heard them as they testified. She also saw the exhibits produced and verified that indeed the Rifle matched the serial number given to fit in the amended charge sheet. In her ruling on the Prosecution application to amend the charge sheet, she was persuaded that no prejudice would be occasioned to the Appellant as only the number 2 and letter X had initially been omitted from the description of the Rifle. She further stated that the Appellant had an opportunity to cross-examine the witnesses and the Court would find out whether the witnesses were referring to the same or a different firearm.

39. In her findings at page 17 of the judgment from line 11, the trial Court stated:

“The only difference is on the serial number of right frame SN on the right frame as read on the rifle itself as UG POL 2X0473C13686 and the one appearing on the report was UG PUG POL 2X0473C13686. Having noted the similarities on the SNos as appearing on the rifle and the Report in relation to the other part of the same rifle I am convinced that the said error was just a typographical error which also (sic) the person who drafted the amended charge sheet.

It is noted that the firearm examiner again (sic) detailed explanation as to why he found that indeed the aforesaid rifle was a firearm capable of being fired”

40. At page 18 line 5of the judgment the trial court stated: ***“It is noted that in the inventory dated 26.5.2016 the SNO of the rifle recovered is an AK-47 rifle SN UG PUL 2X0473C103686 and as such the error on the report is just an error and it does not mean that it is a different rifle all together”***

41. With the above analysis, and findings of the trial Court who had the opportunity of seeing and hearing witnesses as they testified, I am persuaded that the amendment of the charge sheet to provide the correct description of the firearm that was recovered from the Appellant did not occasion him any prejudice. The Appellant was given an opportunity to plead to the substituted charge sheet and the Magistrate in her ruling reminded him that he had an opportunity to cross-examine witnesses. Further, the Appellant continued with his cross-examination of PW2 after the amendments were effected and he never challenged the SNOs of the Rifle as per the old and new charge sheet.

42. Having considered the analysis by the trial Court and her findings on the question of the firearms SNos, I am satisfied that the firearm which was produced in Court matched the SN in the charge sheet as amended and therefore there was only one rifle and one serial number. I am further persuaded and I am in agreement with the trial Court that the errors in recording the incorrect serial number in the original charge sheet were genuine and did not occasion a miscarriage of justice to the Appellant. The error was curable under Section 382 of the Criminal

Procedure Code by amendment which amendment was effected by way of filing a fresh substituted charge and the Appellant given an opportunity to plead to it at page 12 of the proceedings on 16/8/2016 to which he pleaded not guilty, and to cross-examine the witnesses. The charge sheet having been corrected before close of Prosecution case, it cannot be said to be defective.

43. Section 214 of the Criminal Procedure Code provides:

filled, especially where the credibility of the Prosecution witnesses who testified was not in doubt.

52. Accordingly, I find and hold that the alleged failure to call additional witnesses was not crucial and had no bearing to the Prosecution case. Ground 2 of the Appellant's appeal is hereby dismissed as having no merit.

53. The Appellant also claimed in ground 3 that the trial Court failed to find that the law was not complied with when the charge sheet was amended. He submitted that the trial was conducted illegally and that the trial Magistrate did not remind the Appellant the right to recall witnesses after the amendment contrary to **Section 214(1) of the Criminal Procedure Code**.

54. **Section 214 (1) of the Criminal Procedure Code** empowers the Prosecution to amend a charge sheet and it stipulates:

“Where, at any stage of a trial before the close of the case for the Prosecution, it appears to the Court that the charge is defective, either in substance or in form the Court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a view charge as the Court thinks necessary to meet the circumstances of the case;

Provided that:

(1) Where a charge is so altered, the Court shall thereupon call upon the Accused person to plead to the altered charge.”

55. In this case, albeit the Appellant claims that the amendment of the charge sheet did not comply with Section 214(1) of the Criminal Procedure Code, the Court disagrees with the Appellant's assertion because first, the amendment/alteration or substitution of the charge sheet was well-grounded in Section 214(1) of the CPC. Secondly, the Appellant, upon the fresh charge sheet being brought against him by the Prosecution, was given an opportunity to plead to the substituted/amended charge with the alteration to the SNo. Of the Rifle. Thirdly, the Appellant was also reminded in the ruling by the trial Court that he was at liberty to cross examine witnesses upon pleading guilty to the altered charge sheet.

56. For the above reasons, I find the complaint by the Appellant that Section 214(1) of the CPC was flouted by the amendments to the charge to be baseless and without merit. The ground No. 3 of his appeal is accordingly dismissed. I am further fortified by the decision in **Benjamin Kariuki Wirimu Vs R. CR. A 217/2008 NRB where Court of Appeal** stated:

“As correctly observed by Ms. Nyamosi, the trial proceeded as if a plea of not guilty had been entered and the Appellant was given full opportunity to cross-examine all the witnesses and to testify on his own behalf. At no stage of the trial was there any indication that the appellant was ready to plead guilty nor was any complaint raised at all. We think in all circumstances, therefore, that there was no failure of justice occasioned by the irregularity belatedly complained of and we find it was curable under Section 282 of the Criminal Procedure Code.”

The Court of Appeal was saying that even where the Accused is not accorded an opportunity to plead to the altered charge, as long as the proceedings that followed accorded the Accused person an opportunity to cross-examine witnesses and to testify on his own behalf, there was no injustice occasioned to the Accused and the irregularity complained of would be cured under **Section 383 of the Criminal Procedure Code (See also David Irungu Murage and Anthony Kariuki Karuri Vs R. Cr. A 184/2004 (CA))**.

Similarly in **Josphat Karanja Muna Vs. R. (2009) eKLR** the Court of Appeal at Nyeri stated: inter alia.”

57. *“On noncompliance with Section 214 of the CPC, we observed that as far as the Appellant is concerned, the substituted charge at page 5 of the record did not introduce any new matter into the main charge that would have necessitated calling of witnesses. All the substituted charge did was to introduce an amended name of the complainant. That the spirit of Section 214 is to afford an Accused person opportunity to recall and cross-examine witnesses where the amendments would introduce fresh element or ingredient into the offence with which an Accused person was charged. It was actually not meant to be invoked every time an amendment is made even if such an amendment is only to introduce a correction of the name or word.”*

58. In this case, as I find that the trial Court made no error in allowing the amendment to the charge sheet to correct the serial number of the Rifle as the amendment was before close of the Prosecution's case and before all the Prosecution witnesses had testified, I further find that even if there was an irregularity, which I find none, the same is not fatal to the charge as it did not prejudice the Appellant or at all.

59. On the last ground of appeal that the trial Court did not give the Appellant's defence due consideration and that the Court relied on mere assertion without proof, this Court upon re-evaluation of the evidence adduced in the trial Court has found that the trial Magistrate's detailed judgment meticulously considered not only the Prosecution's case but also the defence case. The trial Court recorded the whole testimony of the Appellant and his witness DW2 and in her judgment she evaluated and analyzed those testimonies. I have equally re-evaluated the said testimonies of the defence and am not persuaded that it in any way displaced the watertight evidence of the Prosecution witnesses and which the trial Magistrate found credible, believable and sufficient to sustain a conviction. In my humble view, the evidence by the Prosecution proved the case against the Appellant beyond any reasonable doubt and the defence was in any case not under any duty to prove his innocence. The Appellant's defence was a mere denial and his wife DW2 in cross-examination stated:

“I told him that Byron had already sold a gun

60. The question is, which gun the Accused's wife was referring to if not the one which was recovered on the material night of 25.5.2016?

61. In the end, I find that the Appellant's ground No. 4 that defence was not given due consideration, a sham. It lacks merit. The same is

dismissed.

62. On the whole, and accordingly, I find and hold that the appeal herein is devoid of merit. I dismiss it. I uphold the judgment, conviction and sentence passed by the trial Court on 7.10.2016. The appellant to serve the ten year sentence imposed on him.

Dated, signed and delivered in open court at Siaya this 13th day of June, 2018.

R. E. ABURILI

JUDGE

In the presence of:

Miss Odumba Prosecution Counsel for the State

The appellant present in person

Court Assistant: Brenda