REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 90 OF 2014

IBRAHIM BISHAR ADAN........... APPELLANT

VERSUS

REPUBLIC……………......…….RESPONDENT

(From the conviction and sentence in Wajir SPM Criminal Case No. 91 of 2014 – L. Kassan SPM)

JUDGMENT

The appellant was charged in the magistrate's court at Wajir with four counts. Count 1 was for possession of a firearm contrary to section 89 (1) of the Penal Code. The particulars of the offence were that on 20th March 2014 at Bulla Shair Location in Eldas Sub County within Wajir County without reasonable excuse had in his possession a firearm namely G3 magazine in circumstances which raised reasonable presumption that the said firearm was intended to be used in a manner prejudicial to public order. Count 2 was for possession of ammunition contrary to section 89 (1) of the Penal Code. The particulars of the offence were that on the same day and place without reasonable excuse had in his possessions ammunition namely 3 rounds of 7.67mm x 51mm in circumstances which raised reasonable presumption that the said ammunition was intended to be used in a manner prejudicial to the public order. Count 3 was for un authorized uniform contrary to section 184 (1) of the Penal Code. The particulars of the offence were that on the same day and place not being a person in the disciplined forces or the police service or any other armed forces for the time being lawfully present in Kenya was found in possession of one jungle jacket without authority. Count 4 was for refusing to be taken finger prints contrary to section 55 (5) of the National Police Service Act No. 11 of 2011 Laws of Kenya. The particulars of offence were that on the 20th March 2014 at Eldas Police Station in Eldas Sub County within Wajir County being suspect arrested on charges of possession of a firearm contrary to section 89 (1) of the Penal Code, refused his finger prints to be taken by No. 75585 PC Bruno Waswa a police officer authorized by law to take his fingerprints.

He denied all the four counts. After a full trial he was convicted as charged. He was sentenced to serve ten (10) years imprisonment on count 1; seven (7) years imprisonment on count 2; and two (2) years imprisonment on count 3. The sentences were to run consecutively. The learned magistrate however did not record any sentence on count 4.

Dissatisfied with the decision of the trial court, the appellant has come to this court on appeal. He filed his appeal in person, but at the time of the hearing of his appeal, he was represented by counsel who relied on the same grounds of appeal which are as follows:-

1. That he pleaded not guilty to the charge.
2. That the alleged military jacket belonged to the chief of Majabow location who had brought it to his house for washing.

3. That his cousin Farah Ali Muhumed who failed to repay him Kshs. 53,400/= instigated this case by bribing police officers who subsequently framed him with false charges.
4. That the trial magistrate failed to consider the fact that there was no firearm produced before the court and yet he was charged for the offence.
5. That the police in the guise of conducting search, planted a magazine and four ammunitions in his house.
6. That the verdict of 19 years imprisonment for the offences which he did not commit was very unfair.
7. That he was aged 44 years and had 10 children of whom 7 were school going.

Counsel for the appellant Ms. Kamende & Co. Advocates also filed written submissions. They relied on case authorities.

During the hearing of the appeal, Ms. Kamende highlighted the written submission and stated that the appellant was charged with four counts and 7 prosecution witnesses testified, while the defence had four witnesses. Counsel submitted that the appellant was convicted handed down 3 consecutive sentences, and emphasized that the prosecution did not prove the charges brought against the appellant beyond any reasonable doubt. Counsel added that there were contradictions between the evidence of prosecution witnesses. In this regard counsel submitted that PW1 PC Waswa said that the appellant's house was small and that the gun was wrapped in a piece of cloth, while PC Kamunya PW2 said that not all officers entered the house. According to counsel, PW6 contradicted PW1 by saying that the magazine was wrapped in a piece of underwear.

Counsel also submitted that though there was an allegation that a jungle jacket was found in the appellant's house, the defence story was that the jacket belonged to a chief, as such the court could not make an assumption that it belonged to the administration police force. Counsel emphasized that proof of possession for the arms and ammunition was not established. Counsel stated also that no evidence was tendered to show that the appellant refused that his finger prints be taken by the police.

Counsel further submitted that it was wrong for the learned magistrate to hold that it was the duty of the defence to bring the chief, since the OCS had stated that the chief was reluctant to come and testify. Such views by the trial court amounted to lifting the burden of proof to the appellant.

Counsel emphasized that the evidence of PW1, PW2 and PW3 was contradictory, in that while the OCS said that a woman opened the door, some witnesses who were with him said the appellant was in bed while others said he was sitting, and yet others said he was standing, while some said he was outside. In addition to the above contradictions, counsel submitted that at the evidence on time of the search was contradictory. It was also not clear how the ammunition was wrapped. The motive for possession of the ammunition was also unclear from the evidence.

Counsel submitted that it appeared that the police were merely following the appellant because of an allegation of an earlier bombing at Hon. Keynan's house. According to counsel, non of the four charges was proved by the prosecution. Counsel emphasized that the burden was squarely on the prosecution to prove an accused person guilty beyond any reasonable doubt and relied on the English case of ***Woolmington Vs. DPP [1935] AUER 1***. Counsel also relied on a case of ***R Vs. Okethi Okale [1965] EA 555*** and **Republic Vs. Mbithi Criminal Appeal No. 77 of 1979.** Counsel submitted that the appellant's position was that he was outside the house which was an alibi defence and relied on the case of ***Serentale Vs. Rep. [1968] EA 360*** and a case of ***Sharma Vs. Republic [2002] 2 EA 589*** where the court held that when a defence of an alibi was raised, the prosecution was required to disprove the same.

Lastly, counsel submitted that the sentence was most excessive as no reason was given for imprisoning the appellant for 19 years. Counsel urged this court to allow the appeal.

Learned Assistant Director of Public Prosecutions Mr. Wanyonyi, opposed the appeal. Counsel emphasized that the jungle jacket was found in the house during the search and that PW2 and 3 supported the story of PW1. PW4 who was outside the house, also said that the jacket was found therein. Counsel

submitted further that PW6 who was the investigating officer, testified that the appellant refused to sign the inventory. PW6 also stated that the appellant stated that the jacket belonged to a chief who had given the same to his wife for washing, but the said chief could not be traced. Counsel emphasized that the appellant was a Kenya police reserve officer but who has not been given uniform, and therefore should not have been in possession of the jungle jacket. According to counsel, the court considered the evidence both for prosecution and defence before coming to its conclusion.

With regard to allegations of contradictions, counsel submitted that the prosecution position was that the wife of the appellant opened the door of the grass thatched house and the appellant was in that house. According to counsel, there was evidence that any of the items was planted on the appellant or in his house.

Counsel emphasized that the investigating officer prepared an exhibit memo and forwarded the items to the Firearms Examiner and a report prepared and produced in court as an exhibit. According to counsel, the appellant did not show or produce any licence for holding the rifle. Counsel maintained that the appellant refused to submit the taking of his fingerprints. Counsel relied on a case of ***Ahmed Mohamed Ali Vs. Republic - Mombasa Criminal Appeal No. 21 of 1998*** regarding possession. Counsel also relied on ***Meru High Court Criminal Appeal No. 78 of 2006 - Mohamed Hassan Vs. Republic*** as well as ***Nairobi Criminal Appeal No. 158 of 2014 - John Muguthi Kangethe Vs. Republic*** on production of a Firearm's Examiner's report. Counsel urged the court to dismiss the appeal.

In response thereto, Ms. Kamende learned counsel for the appellant complained that she was ambushed with case authorities cited by the Assistant DPP. Counsel submitted that the case of ***Mohamed Hassan Vs. Republic*** was merely persuasive and not biding in this court. The issues therein were also different. On the case of ***John Kangethe Vs, Republic*** the issue was the production of the Ballistic Examiner's report which was not similar with our present case. Counsel submitted that the jungle jacket was not identified as belonging to the Administration Police, and maintained that the magistrate misdirected himself by saying that the appellant was charged somewhere else while there was no such evidence before him. Counsel also submitted that the case of ***Ahmed Ali Vs. Republic*** related to drugs and had no bearing on the present appeal.

During the trial the prosecution called 7 witnesses. PW1 was PC Bruno Waswa of Eldas Police Station. His evidence was that on 20th March 2014 at 4.00am he was woken up by PC Paul Kirimi and they joined the OCS who informed them that one Bishar Adan had a firearm. Together with OCS C.I Ruto and other officers, they proceeded to the house and the OCS knocked at the door after dividing the police officers into two groups.

One group to search the left side and the other to search the right side of the house.

The house was a one roomed grass thatched house. As the witness searched, he found a G3 magazine wrapped in a cloth above the door of the house. It had three rounds of ammunition. PC Kimunya, on the other hand recovered a military jacket on the bed. They searched other two houses within the same homestead and recovered nothing more. The next day the appellant's wife came to station and said that the cloth was hers. This witness forwarded the recovered items to the Ballistic Examiner through a ballistic memo and PC Kirimi took the items there and also received the report. He stated that, in the house where the items were recovered, the appellant, his wife and a one year child were present.

In cross examination, he stated that he was not aware that the appellant was a suspected terrorist. He stated that the house was actually a small hut and that 5 officers entered the house. He was aware of clan conflicts and maintained that the wife of the appellant went to the police station later and claimed the cloth. He denied planting the items in the house but stated that the appellant did not accept ownership of the items.

In re-examination, he stated that the appellant said that the jacket belonged to a chief. He maintains that the appellant's wife went to the police station the next day.

PW2 was PC Joseph Kimunya. His evidence was that on 20th March 2014 at 4am, with OCS CI Ruto and others, they proceeded in a GK vehicle to a suspect's house. The OCS called from outside and the man opened the door and four officers including the OCS entered. The officers were split into two groups and each had a torch. He stated that he recovered a jungle jacket from a mattress and that the appellant said it was his. According to this witness, PC Waswa retrieved items from the roof wrapped in a piece of cloth. Those items were a magazine and 3 rounds of ammunition.

In cross examination, he stated that the appellant was not surprised when he saw police. He maintained that four officers entered the house while four remained outside though PC Saitet later entered the house. He stated that he was in the group that inspected the right side of the house. According to him, as they inspected the house the appellant was sitting down. He was not aware that the appellant had been charged before. He stated that the house was a traditional one roomed house.

In re-examination, he maintained that he recovered the jacket beneath a mattress.

PW3 was PC Martin Mwangi. It was his evidence that he was called at 4am on 20th March 2014 to go for duty. They boarded a vehicle to a house which was pointed out by the OCS who called the appellant by name and he opened the door. He stated that the appellant welcomed the police who entered and found the appellant and the wife.

The witness searched the left hand side of the house. He was then informed that a magazine with 3 rounds of ammunition had been found tied in a yellow short. He stated that the appellant denied knowledge of the items. It was also his evidence that PC Kamunya found a jungle jacket. According to him, though they searched two other adjacent houses, nothing else was recovered. He maintained that both the appellant and his wife were present during the search.

In cross examination, he stated that the appellant denied possession of the magazine. It was only on the next day, that the wife claimed that the pair of short belonged to her. When referred to the police statement, he stated that he forgot to mention therein that he had his own torch. He maintained that the appellant witnessed the search while standing and the wife helped in opening places for the officers to do the search.

In re-examination, he maintained that both the appellant and his wife were present during the search.

PW4 was PC Kirimi of Eldas Police Station. It was his evidence that he was woken up at 4.00am and, with other armed police officers, they boarded a station Toyota Land cruiser to a house where he remained outside with other officers, while some entered inside. He was later informed that a magazine, 3 bullets and a jungle bullet had been recovered. He saw the items.

In cross examination, he stated that the OCS told them before arrival at the house, that a gun was suspected to have been hidden somewhere. He maintained that he did not enter the house.

PW5 was PC Mwangi who stated that he was woken up at 3am and joined a search party. He was part of the team that secured the compound from outside the house. He was later given information that a jungle jacket, magazine and 3 rounds of ammunition had been recovered.

In cross examination, he stated that he was told by the OCS to go to the house of Bishar Ibrahim Adan. He had not been there before. In reexamination he maintained the he merely cordoned the house.

PW6 was C.I. Shadrack Ruto of Eldas Police Station. He was the OCS and received a report that a suspect was in possession firearm. He was aware that on 20th February 2014, an explosion had occurred at Keynan's house. He stated that on 20th March 2014 at 21hours, he called his officers and asked them to be ready for an operation at 4am. He briefed them and led them to the house and divided the search party. According to him, each of the police officers had a torch and he himself had a solar powered fully charged torch.

He assigned some officers to guard outside and some to enter the house. The wife of the appellant opened the house and also woke up the appellant whom he knew before. The appellant agreed that the search be carried out. According to him, the appellant came out after about 2minutes. He stated that he prepared an inventory of the roles of the officers, targets and prior information. He stated that the appellant was with his wife and an infant in that house. After about 1 to 2 minutes of the search, PC Waswa PW1 who was in one of the two teams, brought out something covered in a pair of shorts. The appellant denied knowledge of the same. PC Kimunya also removed a jungle jacket and the appellant said it belonged to chief of Majabow.

They went on to search another house, a store and another house where children slept. They did not recover anything more and he called off the search at 6.05am. He stated that the appellant refused to sign an inventory. He also stated that the wife of the appellant brought breakfast to the appellant at the police station and demanded the underwear the pair of shorts. It was his evidence that the items recovered were taken to the Ballistic Experts in Nairobi.

It was his evidence that, though he had tried to trace the chief of Majabow, he could not find him and his information was that he had resigned or been interdicted and that no replacement had been made. He identified the ballistic report, and stated that he had been investigating the appellant long before the incident. One day, he saw him wear faded police uniform but did not arrest him because the cloths were faded. He stated that he had a lot of intelligence information about the appellant.

In cross examination, he stated that he was not aware that PW5 had said that he told the police officers where they were going to. He stated that five police officers entered the house and that he stood at the door with his powerful torch. He maintained that PC Waswa and PC Kamunya searched the right side of the door while PC Mwangi and Saitet searched the right hand side. He stated that the house was a single room house and that he invited both the appellant and his wife to participate in the search. He stated that the appellant was a suspect to a bombing which had occurred on Keynan's house on 20th February 2014. However he did not search the appellant's house on that day.

He stated that he called the appellant before searching his house on 20th March 2014. He stated further that the information he had was that during clan conflicts the appellant wore police uniform. He maintained that the appellant said that the jacket belonged to a chief of Majabow which was a lie. He did not trace the chief through the D.O or County Commissioner. He denied planting the exhibits on the appellant.

In re-examination, he stated that he searched 3 houses and that it was normal routine to divide officers in a search operation. He stated that he had summoned the appellant to office when he received adverse information about him. He stated that initially he did not have a suspect for the 20th February 2014 incident (Keynan's house explosion).

PW7 was Josphat Mwangele Musyoki a Ballistic Examiner. It was his evidence that on 27th April 2014, he received items from PC Kirimi. These were a magazine and 3 rounds of ammunition. He carried out analysis and found that the ammunition was 7.62mm x 51mm for use in G3 rifle. The magazine was a G3 magazine capable of holding 20 ammunitions and was usable. The ammunition were live. He prepared a report which he tendered in evidence as an exhibit.

In cross examination, he stated that the ammunition could be used in G3 rifle. He could not say whether the magazine had been used previously. That was the prosecution evidence.

In his defence the appellant gave sworn testimony. He stated that he was a KPR – Kenya Police Reserve officer and that the police came to his house at 5am. They were six to seven officers. He was with his wife and allowed them to search. About 4 officers entered the house but he stood outside. He denied having had any ammunition or magazine in the house. He said that the pair of shorts taken by the police belonged to his son who had put it on the roof after playing football. He said that the jungle jacket belonged to a chief who gave it to his wife. At this point, the appellant was stood down in order to avail exhibits, and the case adjourned to another date.

When he later came to testify, he said that the short which was produced in court did not belong to his son. He stated that his wife and child were in the house during the search, and that he was actually in the bush when the chief gave the jacket to his wife to wash. He stated that he had called the chief who informed him that he had been threatened by Keynan if he came to testify in court. He stated that his house had not been searched before.

In cross examination, he stated that he was enlisted with KPR more than 2 years earlier after vetting by the DO and the chief but that he had not been given a gun, nor trained nor supplied with uniform. He stated that the short belonged to his 16 year old son. He stated that the boy was in boarding school but was at home slept in a separate house on that day. In re-examination, he stated that that night the 16 year old boy was at home. He maintained that he talked to the chief who said that Keynan had threatened him.

DW2 was Ibrahim Hawa Issack the wife of the appellant. It was her testimony that that night at around 4am, Inspector Rutto whom she knew before came home and asked for her husband. She woke up her husband and when he went out, the police searched the house in her presence. According to her, four policemen searched the house by emptying the clothes all over. They recovered a jungle jacket belonging to her brother in law by the name Ibrahim Adhow who was a chief, who used to give them several clothes to wash. She denied knowledge of the pair of shorts produced by the police which she said did not belong to a woman. She denied demanding the same from the police. She denied that a magazine was recovered from the house. She stated that the pair of shorts belonging her son taken by the police from the outside roof of the house, was not recovered. She stated that on that day her son was at home.

In cross examination, she stated that her 16 years old son was her second born. She stated also that she knew Ibrahim Adhow for a long time. She agreed that she went to the police station after the arrest of her husband. She went there at about 1pm the same day.

In re-examination she stated that she went to the station to provide food to her husband. She maintained that the chief feared coming to court because he had been threatened with sacking.

At this point Mr. Wanyoike counsel for the defence asked the trial court to issue summons for the chief to attend court as a witness. The summons were issued by the court but it was later recorded that the chief was not traced.

DW3 was Sauda Birre a neighbour of the appellant. It was her evidence that she knew Chief Ibrahim Garat who was also called Attaw and was an uncle of the appellant. She stated that the chief regularly visited the appellant's house to eat food and gave the wife of the appellant a jungle jacket to wash.

In cross examination, she stated that police jackets looked alike. She stated that she was present when the chief gave the wife of the appellant a jacket which ordinarily chiefs wore.

DW4 was Kaltuma Maalim also a neighbour of the appellant. It was his evidence that he knew Chief Ibrahim Garat as an uncle of the appellant. According to him the chief could come and sleep in the appellants' house. He normally wore an army type jungle jacket and could give it the appellant's wife to wash.

In cross examination, he stated that he saw the chief give the appellant's wife the jungle jacket to wash. She stated that such jackets resembled but she was sure that the one in court belonged to the chief.

In re-examination, she stated that there were no unique markings on the jacket.

DW5 was Bishar Garat who testified that he knew the chief called Garat who frequently visited the appellant's house and ate there. According to him, the chief could leave the jungle jacket with the wife of the appellant to wash.

In cross examination, he said that he was present when the chief brought the jacket and that he had previously seen the jacket on the drying line.

That was the evidence of the defence side.

Faced with the above evidence the learned magistrate convicted the appellant and sentenced him as earlier stated in this judgment. There from arose the present appeal.

This being a first appeal, I am duty bound to reexamine the evidence on record and come to my own conclusions and inferences. I have to be mindful of the fact that I did not see the witnesses testify during the trial in order to determine their demeanor and to make due allowance for that fact. See the case of ***Okeno Vs. Republic [1972] EA 32***.

The appellant was convicted of four counts. The first was for possession of a firearm. The second was for possession of ammunition. The third was for possession of an authorized uniform. The fourth was for refusal to be taken finger prints. He was not however sentenced on the count for refusal to be taken finger prints.

I have re-evaluated the evidence on record.

I will start count of refusal to be taken finger prints. I have perused the evidence on record. There is no allegation or witness who stated that the appellant refused to be taken finger prints before being charged or before brought into court or even afterwards. The evidence of the prosecution witnesses was that he refused to sign an inventory of the operation and the items recovered or allegedly recovered from his house. This was the evidence of PW6 C.i. Shadrack Ruto. In the course of the trial or proceedings however, the magistrate ordered that the appellants finger prints be taken and he willingly complied with the court's order. It cannot thus be said that the appellant committed an offence of refusal to be taken finger prints. The conviction of the magistrate on this offence was thus based on no evidence. It cannot stand. I will quash the conviction of the appellant on that count. Since the trial court did not sentence on that offence, there is no sentence to be set aside.

I come to the charge of possession of a firearm without a certificate. What is alleged to be a firearm is a magazine, a G3 rifle magazine. The prosecution claimed that the magazine, which was produced in court as an exhibit, was recovered in the roof of the grass thatched one roomed traditional house of the appellant, just above the door wrapped in a piece of cloth or pair of shorts. The appellant stated that that item was not recovered from his house. That he was in any event outside the house when the police searched and allegedly recovered the item. He stated that a cousin of his who had refused to pay him his money, went ahead to implicate him with this offence.

The wife of the appellant stated that she was in the house when the search was conducted and that no magazine was recovered from the house as alleged. She stated that a pair of shorts belonging to her 16 year old son was taken from the roof outside the house by the police, and that she went to ask for that item from the police the next day. She stated that the pair of shorts produced by the police in court was not her son's pair of shorts, which had been taken from the roof of the house.

I agree with the submission by counsel for the appellant that the burden is always on the prosecution to prove a criminal charge or offence against an accused beyond reasonable doubt. The holding in the English case of ***Woolmington Vs. DPP[1935] A11ER1*** has been consistently applied by courts in Kenya. The case of ***Republic Vs. Okethi Okale [1965] EA 555*** is but one of those cases in which the standard of proof in criminal cases was emphasized by the court.

Having evaluated the evidence on record, I find no truth in the allegation by the appellant that he was not in the house when the search was conducted. All the prosecution witnesses said that he was called or woken up and initially came out of the house, but was later in the house when the search was conducted using torches. In his cross examination through his counsel, no suggestion was made that he was excluded from the house when the search was conducted and the magazine and arms (bullets) recovered covered with a pair of shorts and polythene. The prosecution evidence was that he denied knowledge of the item when it was recovered in his presence, which was his right to do so, which was again not challenged by the defence in cross – examination.

His wife's allegation that the pair of shorts was recovered from outside the house cannot also be true. She was emphatic that she was inside the house when the search was conducted. In my view therefore she could not see or witness a pair of shorts which was taken by the police from outside the house while she was inside the house. She followed the pair of shorts which she said belonged to her 16 year old son to the police station the next day. At the trial she denied that the pair of shorts taken by the police belonged to her son without explaining or describing the pair of shorts belonging to her son. In my view, the conduct of this defence witness, was an attempt to divert attention from the real issues, as the appellant and herself were the only witnesses present during the police search in the house of the appellant.

The magazine was not found in actual or physical possession of the appellant. However in my view it was found in his house which he did not deny. That house being his, unless he gave a convincing explanation about how that item could have arrived there, in my view possession could be proved or established. Control of premises and possession are inter related. In the case of ***Ahmed Mohamed Ali Vs. Republic – Mombasa Criminal Appeal No. 21 of 1998 the Court of Appeal*** held – **"we are satisfied that on the evidence on record the appellant and the other four persons in the room with him were in possession of the drugs within the meaning of section 3 (1) of the Act…"** The fact that the item was not a complete G3 rifle did not mean that it was not a firearm. Section 2 of the Firearms Act (Cap. 114) defines a fire arm as including component of a firearm. Therefore in my view, count 1 was proved, and the conviction on same will be upheld.

With regard to count 2 for possession of ammunition, in my view the same was also proved beyond reasonable doubt because the three bullets were found in the same place in the house wrapped together with the magazine which is the subject of count 1. Both the magazine and the bullets were hidden in the roof of the grass thatched house of the appellant. The appellant had control of the same and was present during recovery of the same.

With regard to count 3 for an authorized uniform, there is no denial in both the prosecution and the defence versions that the jungle jacket was indeed found in the house of the appellant by the police. The defence version is that the said jacket belonged to a chief who used to bring his jackets and other clothes there for washing by the wife of the appellant, and who had refused to come to court to testify because he had been threatened by Hon. Keynan. Therefore it cannot be said that the jacket was not found in the possession or control of the appellant who knew quite well that the jacket was there.

During the defence case, the defence asked the court to issue summons for the chief (Adhow)to appear in court. Summons were issued but the chief did not appear. On their part, the prosecution informed the court that they tried to trace the chief but were told that he was either suspended or interdicted. With the evidence before the court, the prosecution proved that the jacket was in the possession or control of the appellant and his wife. The definition of unauthorized uniform under Section 184 of the Penal Code is very wide. The burden was on the appellant to show the justification for his possessing that jacket. The explanation given by the defence that the jungle jacket belonged to a chief was not satisfactory and was merely meant to hide the truth

The sentence for offences under section 89 (1) imprisonment is for a term not less than 7 years and not more than 15 years. The appellant was sentenced to serve 10 years imprisonment for count 1, and 7 years imprisonment on count 2, both offences being under section 89 (1) of the Penal Code.

In my view both sentences were within the parameters of the law. However these being offences where there are minimum sentences, I do not see any aggravating factors which would justify the 10 years imprisonment for count 1. I appreciate that sentencing is discretion of the trial court, but in my view the minimum sentence of 7 years imprisonment would suffice as adequate punishment for count 1. I will thus interfere with the sentence on count 1.

The appellant was sentenced to serve 2 years imprisonment on the charge of possession of police uniform under section 184 (1) of the Penal Code. That sentence is illegal as the section provided a sentence of one month imprisonment or a fine of Kshs. 600/=. I will thus also interfere with that sentence and correct the error committed by the learned magistrate.

Having re-evaluated all the evidence on record, I come to the conclusion that the conviction on count 4 is not sustainable. I quash the conviction for refusal to be taken finger prints. I however uphold the conviction for possession of firearm (count 1), possession of ammunitions (count 2) and possession of an authorized uniform (count 3).

I set aside the sentence of 10 years imprisonment for the offence of possession of a firearm and substitute thereto to a sentence of imprisonment for 7 years from the date he was sentenced by the trial court. I uphold the sentence of 7 years imprisonment for possession of ammunition. I set aside the sentence of 2 years imprisonment for the offence of possession of an authorized uniform and substitute therefore a sentence of one month imprisonment from the date he was sentenced by the trial court.

I also order that the sentences will run concurrently, in effect the appellant will serve a total of 7 years imprisonment, from the date on which he was sentenced by the learned trial magistrate. It is so ordered.

Dated and delivered at Garissa this 19th day of January, 2016

GEORGE DULU

JUDGE