



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 34 OF 2013

PAUL LOTAKO NATIPO APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant, Paul Lotako Natiko, appeared before the Resident Magistrate at Lodwar charged with possession of a firearm without a firearm certificate contrary to section 4 (2) (a) read with section 4 (3) (3) of the Firearms Act in that on 27th August, 2011 at Kakuma market Turkana West District, with others not before court was found in possession of a firearm make AK 47 Rifle and a magazine without a firearm certificate.

After a full trial, the appellant was convicted and sentenced to serve five (5) years imprisonment. He was however, dissatisfied with the outcome and preferred this appeal on the basis of the grounds in his petition of appeal filed herein on 12th April, 2013. He appeared in person at the hearing of the appeal and relied on his written submissions in support of his case.

Mr Kimanzi, the learned Prosecution counsel, appeared for the state respondent and opposed the appeal by submitting that PW1 as corroborated by PW2 and PW3 confirmed that the appellant was in possession of the firearm and that PW4 confirmed that the firearm was indeed a firearm. The learned prosecution counsel contended that the appeal is not merited and called for its dismissal.

Having considered the written submissions by the appellant and the oral submissions by the respondent, the duty of this court is to re-visit the evidence and draw its own conclusion being in mind that the trial court had the advantage of seeing and hearing the witnesses.

Accordingly, the prosecution case was that on the material date at about 3.00 p.m. **Lore Simon (PW1)**, a welder at Kakuma town, I was in his workshop when he was approached by a group of five people who indicated to him that they had a motor bike which required fixing. They asked him to accompany them to a certain homestead and he agreed. At the homestead, they entered a house and came out with a sack containing a firearm which had a crack they wanted fixed using a welding machine. He (PW1) refused to fix the firearm and alerted some police reservist who included **Micheal Samal (PW2)**.

Samal (PW2) proceeded to the scene and found the five men. They told him that they were also police reservist but he doubted them. He saw the firearm and alerted **P.C Paul Sum (PW3)** of Kakuma police station.

In the meantime, four of the five men dispersed from the scene leaving one behind. He was the appellant herein.

P.C Sum and his colleagues arrived at the scene and found that the appellant had already been arrested by the reservist. He (PW3) collected the firearm and its empty magazine. He found it to be an old firearm make AK 47. He conducted the necessary investigations and later charged the appellant with the present offence.

A ballistic expert, SP Laveke Nitiwa (PW4), produced the necessary report confirming that the firearm was a firearm in terms of the Firearm Act and was capable of being fired.

The appellant denied the offence and defended himself by stating that on the material date he went to see his brother one Edapal to collect some medicine. The two later parted ways after the medicine was purchased. He (appellant) proceeded to a market to buy clothes and it was there that a man appeared, he held his shirt and beat him up. The man then made a call to the police. Thereafter, he (appellant) was taken to the police station and locked up in the cells.

His property was taken from him and nobody listened to him. He was later taken to court without knowing why he was arrested.

From all the foregoing evidence, it is the opinion of this court that an old but effective firearm was recovered by police officers after it had been presented to Lore (PW1) by a group of five men so that he could fix a crack on it in his capacity as a welder. He however, became suspicious and

alerted the police reservist (PW2) who in turn alerted the police through P.C Sum (PW3).

Both PW2 and PW3 proceeded to the scene and found Lore (PW1) as well as the appellant who was one of the five men. His colleagues had cunningly left the scene.

The police officers (PW2 and PW3) confirmed the existence of the firearm and its possession by the appellant and others.

In his defence, the appellant merely denied the offence and indicated that he was arrested and charged without any good cause. He clearly avoided to talk about the firearm despite the evidence overwhelmingly showing that it was in his possession and four others. He made no attempt to even show that his possession of the firearm was lawful. He did not show or produce any firearm certificate.

Indeed, the appellant was in unlawful possession of the firearm as shown by the very cogent and credible evidence against him. His defence was in the circumstances completely unsustainable.

Consequently, it is the finding of this court that the learned trial magistrate was correct in convicting the appellant which conviction is hereby upheld

The sentence meted out against the appellant was lawful.

In sum, this appeal is dismissed for want of merit.

J. R. KARANJA,

JUDGE

(Delivered and signed this 21st day of January, 2014).