

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 475 OF 2012

REPUBLIC

VERSUS

ALEXANDER MUTISO PETER APPELLANT

RULING ON REVISION

The Applicant, **Alexander Mutiso Peter**, was convicted and sentenced to three years imprisonment for the offence of being in possession of an imitation firearm without a firearm certificate contrary to **section 34 (1)** of the **Firearm Act Cap 114 Laws of Kenya**.

The particulars of the offence were that on the 28th of December 2011 at around 13.40 Hours at **Sofia Estate of Athi River District** within the **Eastern Province** the Appellant was found in possession of an imitation firearm namely a toy pistol without a firearm certificate with intent to commit a criminal offence.

2. On 26/10/2013, the Applicant applied for the sentence to be reviewed under **section 362** and **364** of the **Criminal Procedure Code**.
3. Under **section 362** of the **Criminal Procedure Code**, the High Court has powers to call for the lower court records for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any such proceedings.
4. I have examined the record of the lower court. The only illegality that I have noted is on sentence. The penalty provided by **section 34 (1)** of the **Firearms Act Cap 114 Laws of Kenya** is imprisonment for a term not less than seven years but not exceeding fifteen years.
5. **Section 364 (2)** of the **Criminal Procedure Code** provides as follows:-

“No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

6. The trial court imposed a sentence of three years when it was required by the law that a sentence of not less than seven years imprisonment be passed. Consequently, I revise the sentence to read seven years imprisonment. Right of Appeal 14 days.

.....
B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 24th day of February 2014.

.....

B. THURANIRA JADEN

JUDGE