



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 168 OF 2011**

RAMADHAN SIMBA ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 1546 of 2011 of the Principal Magistrate's Court at Kwale – **Hon. Aminga - PM**)

**JUDGMENT**

**RAMADHANI SIMBA** hereinafter referred to as the Appellant was Convicted and Sentenced to five (5) years imprisonment for the offence of being in possession of a firearm without a firearm certificate contrary to section 4(2) (a) of the firearms Act Cap 114 Laws of Kenya.

The particulars being that:-

***“On 12th day of October, 2010 at about 20:30 hours at Masrep area Mkwani village Kwale county he was found in possession of a firearm make Bruni Serial number not visible without holding a firearm certificate”.***

The grounds of appeal are;

1. **There was no documentary evidence of the ownership of the firearm.**
2. **No certificate of recovery was produced in Court.**
3. **Prosecution evidence was riddled with contradictions and hence not reliable.**
4. **The Conviction was against the weight of evidence.**

In his submissions the appellant appears to have abandoned the appeal on Conviction and instead dwelt on the Sentence only.

In his unsworn statement the Appellant had conceded to have had possession of the firearm after it was handed over to him by a man of German nationality, who was the boyfriend of **PW 1** who had led police to his house. He also told police that he had documents for the firearm. No such documents were produced in Court by the defence.

In his Judgment the learned trial magistrate at page 23 line 10 had this to observe,

***“Both the Accused as well as his wife (DW 2) concede that the items were recovered***

***from his house”.***

It is this role in the keeping of the items that would call for consideration. According to PW 1, the parcel containing the firearm had been handed over to the Accused by her Deceased German boy friend on 2nd March, 2010. The Accused got arrested on 14th October, 2010 (about seven (7) months later). Whereas the trial magistrate did pose some disturbing issues he did, however, still come to the conclusion that the Appellant knew the presence of firearm in the parcel which he was given by PW 1's boyfriend. He latter knew that he had passed on and did not handover the firearm to police.

The Conviction I find to have been safe. On the issue of Sentence the Appellant was Sentenced to five (5) years imprisonment, whereas the offence carried a maximum Sentence of fifteen (15) years at the time.

Before Sentencing the Appellant the learned trial magistrate had called for a probation report on the Accused which report was not favourable for probation placement.

The Sentence of five (5) years Imprisonment for the offence of being in possession of a firearm without a permit or certificate is not harsh or excessive. This appeal has no merit and its disallowed accordingly.

Judgment delivered dated and signed in open Court this **16th** day of **September, 2014**.

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**M. MUYA**

**JUDGE**

**16TH SEPTEMBER, 2014**

**In the presence of:-**

Mr. Jami Counsel for the State

The Appellant

Court clerk Musundi