

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 5 of 2012

JOHN KABUE NGANGA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentencing in Criminal Case No. 2960 of 2008 of the Chief Magistrate's Court at Thika by L. Wachira, SRM)

JUDGMENT

The appellant was charged with two offences. In count I, he was charged with the offence of being in possession of ammunition without the firearms certificate contrary to Section 4(1) as read with Section 4 (3) of the Firearms Act Cap. 114 Laws of Kenya. In count II, he was charged with the offence of unlawfully being in possession of an imitation firearm contrary to Section 34(2) as read with Subsection 3 of the same Act.

He denied the offences but following a full trial, he was convicted and sentenced to seven years imprisonment in count I, and seven years imprisonment in count II. The sentences were ordered to run concurrently. He appealed against both the said conviction and sentence.

In his appeal, he has complained that the case against him was not proved and that he was not in possession of the subject matters set out in the charge sheet. The evidence adduced by the prosecution witnesses was that the appellant was arrested for the offence of being drunk and disorderly. There was also suspicion that he was wanted for another case and on being arrested he was interrogated.

In the process, he led the police to where he lived and on arrival, the police found the kiosk which he said was his residence locked. The appellant opened the kiosk and there was nobody inside only that there were some cartons on the floor. There was a nylon gunny bag which he was using as a pillow. The gunny bag was opened and inside, there were some playing cards. There was another polythene bag which was also emptied and toy pistol recovered. Also recovered were two rounds of live ammunition which are used in AK 47 rifles. At that point, the appellant tried to escape but the police dog apprehended him.

A Firearm Examiner conducted tests on the recovered exhibits and confirmed that they were an imitation firearm and two rounds of ammunition capable of being used. On being called to defend himself, the appellant told the court that he will leave it to the court and he will not call any witnesses. Although he participated in the trial by cross-examining the prosecution witnesses, there was no doubt left that he lived in the kiosk to which he led the police and considering that he is the one who opened the place on arrival, he had exclusive occupation and possession of all things recovered therefrom. There is no doubt therefore, that the fact of possession was proved beyond reasonable doubt.

The evidence adduced by the prosecution witnesses was corroborative. The Ballistic Expert examined the recovered exhibits and produced his report. That evidence also remains uncontroverted. The offences against the appellant were proved beyond doubt and the sentences imposed were legal under the relevant provisions cited in the charge sheet. Accordingly this appeal is dismissed.

Orders accordingly.

SIGNED DATED and DELIVERED in open court this 26th day of March, 2013.

MBOGHOLI MSAGHA
JUDGE