



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 81 OF 2011**

*LESIT, J*

**GEDION EMALIA AKWASHETI.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT.**

*(From the original conviction and sentence in criminal case No. 9 of 2011 in the Principal Magistrates Court at Isiolo)*

**JUDGEMENT**

1. The Appellant pleaded guilty to one count of being in possession of a firearm without a firearm certificate contrary to section 4(1) as read with s.4(3) of the Firearms Act. He also pleaded guilty to the second count of being in possession of ammunition contrary to same provisions. The Appellant was convicted of both counts and sentenced to ten years imprisonment in both counts. The prison terms were ordered to run concurrently.
2. The Appellant was aggrieved by the sentence. He filed an application seeking leave to file his appeal out of time which was granted. He then filed a Petition of Appeal to which he annexed mitigation raising six points as follows:
  1. **That I pleaded guilty to the charge.**
  2. **That I humbly beg the Hon. Court to consider that the sentence of 10 years imprisonment imposed against me for the offence of being in possession of the firearms and ammunition contrary to section 4(2) of the Firearm Act was harsh and excessive.**
  3. **That I humbly pray for the excessive sentence to be substituted with a more lenient punishment.**
  4. **That my health has deteriorated due to severe illness e.g. TB and peptic ulcers hence pray for noncustodial sentence to allow me seek for proper medical care.**
  5. **That am the bread winner in my family hence beg for a noncustodial sentence to allow me carter for the family as am an orphan.**
  6. **That I therefore urge this court to reduce the sentence imposed upon me and/or substitute with a no-custodial one as the court may deem fit in the circumstances.**

3. In his appeal, the Appellant urged court to exercise leniency and reduce his sentence. He urged that he admits the offence and urges he had since reformed and also undergone a course in Panel Beating complete with a certificate which he displayed in court. He urged that he had been counseled on peaceful co-existence with people and would never repeat the offence.
4. The State was represented by Miss Mwangi. The learned State Counsel did not oppose the appeal and left it to the court to determine the appeal.
5. I have carefully considered this appeal. The Appellant was convicted of an offence under S.4 (1) as read with Section 4(3) of the Firearms Act. Under that section the Appellant was liable to imprisonment for a minimum of 7 years and a maximum of 10 years.
6. The Appellant was a first offender. He was found sleeping and on inspection a firearm with 10 rounds of ammunition recovered under his mattress.
7. The learned trial magistrate did not justify why he imposed to the maximum sentence provided under the law. That seems to be without a good basis.
8. I noted that in mitigation the Appellant stated that he had armed himself in order to lodge a revenge attack against his former employer. That is a self incriminating statement. It violated Article 50(2) (I) of the Constitution. The learned trial magistrate ought not to have recorded that statement. It appears that this statement may have been the reason the learned trial magistrate imposed a maximum sentence for the offence.
9. The Appellant pleaded guilty to the charge. That was proof of his remorsefulness. In addition the Appellant saved the court precious time. He should have been treated with leniency. The sentence imposed being the maximum sentence provided for under the law was harsh in all the circumstances of this case.
10. I have come to the conclusion that the Appellant's appeal against sentence should succeed. Accordingly I set aside the sentence of 10 years imprisonment and in substitution thereof impose a sentence of 7 years imprisonment. The Appellant succeeds to that extent.

**DATED SIGNED AND DELIVERED AT MERU THIS 30<sup>TH</sup> DAY OF OCTOBER, 2013.**

**J. LESIIT**

**JUDGE**