



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 87A OF 2010**

***LESIIT, J***

**ABDI AHMED.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

***Being an Appeal from the Pms court Isiolo Criminal Case No. 1932 of 2006 from the judgment and sentence of M. MAUNDU PM delivered on the 14<sup>TH</sup> April, 2010.)***

**JUDGEMENT**

1. The Appellant was found guilty and convicted of one count of Being in Possession of a Firearm without a firearm certificate contrary to section 4(2)(a) of the Firearms Act. He was sentenced to an imprisonment term of 10 years. Being aggrieved by the conviction and sentence he filed this appeal.
2. In his address before the court the Appellant urged that he was abandoning his appeal against the conviction and was only pursuing his appeal against sentence. He submitted that he had a metal in his left leg and that he suffered from ulcers, and that since his incarceration his health had deteriorated. He urged that he had gone through Training and would be capable of fending for himself from the skills he had learned. He also said that had gone through Counseling and Guidance and would be of better use to the society.
3. The state was represented by Mr. Moses Mungai who urged the court to note that the maximum sentence for the offence is 10 years imprisonment.
4. I have carefully considered this Appeal. The Appellant is only challenging the sentence of 10 years imprisonment. I noted from the record that the prosecution indicated that the Appellant had one previous conviction for which he was serving sentence. The Appellant in response admitted that he was serving a sentence for a similar offence.
5. With due respect to the learned magistrate the way to receive a previous record of an accused person was not followed. In such a case the prosecution is required to adduce proof of previous conviction by producing a Certificate from the Central Bureau of Criminal Records as proof of the conviction. In the bare minimum the prosecution could provide the case number and the court in which the accused person was convicted and if possible cause it to be availed to the court. In either case the court is expected to put the record to the accused person and require him to admit or deny

the same. In the instant case neither a Certificate of previous records nor a conviction nor the court and criminal case number in which the Appellant was convicted were given. The prosecution did not therefore establish that the Appellant was ever convicted of any offence prior to the one on record.

6. I note from the record that the learned trial magistrate must have been influenced by the allegation that the Appellant had a similar previous conviction consequently he imposed a sentence of 10 years imprisonment under Section 4(3) (a) of the Fire Arm's Act a persons convicted of an offence under section 4(2) of the Act is liable to imprisonment for a period not less than seven years and not more than 15 years imprisonment. The learned trial magistrate misdirected himself that the Appellant had a previous conviction. In the circumstances the Appellant Appeal against sentence is allowed.
7. I will allow the Appellants Appeal and set aside the sentence of 10 years imprisonment and in substitution thereof sentence the Appellant to an imprisonment term of 8 years from the date of sentence in the lower court.

**DATED SIGNED AND DELIVERED AT MERU THIS 23<sup>rd</sup> DAY OF OCTOBER, 2013.**

**J. LESIIT**

**JUDGE**