



Lokichar Division was on usual patrol at about 10.00 a.m. when he spotted the appellant armed with a firearm.

The chief notified two police reservists including **Elim Aru Alipan (PW1)**. The two approached and arrested the appellant while in possession of a firearm make AK 47 loaded with three rounds of ammunition. The appellant was handed over to the chief who in turn handed him over to the police at Kainuk police station.

**Cpl. David Mwangangi (PW3)** of Kainuk Police station received the appellant and the recovered firearms and commenced investigations during which he noted that the serial number of the firearm was No. 03563 and that the rounds of ammunition were of caliber 7.62 x 39 mm (special). He forwarded the firearms for ballistic analysis and later preferred the present charges against the appellant.

The ballistic expert, **SP Lawrence Nthiwa (PW4)** received for examination an AK 47 rifle S/N. 19907 and three rounds of ammunition. He examined the said items and confirmed that they were firearms as defined by the Firearms Act.

The appellant's defence was that he left Nakuriamet on learning that the Government was looking for illegal firearms and had asked people to surrender such. He went to deliver a firearm to the chief but was shocked for being arrested for obeying the Government directive to surrender the firearm.

After considering the evidence before him, the learned trial magistrate concluded that the appellant was in illegal possession of a firearm and its rounds of ammunition. Consequently, the appellant was convicted and sentenced accordingly.

Having considered the submissions by both the appellant and the respondent in the light of the evidence adduced before the trial court, this court is of the view that the prosecution case against the appellant was not proved beyond reasonable doubt.

Firstly, whereas there was no dispute that the appellant was indeed in possession of a firearm and three rounds of ammunition, there was no denial from the prosecution that a disarmament exercise was in progress at the time in the area. This was confirmed by the chief (PW2) who ironically decided to cause the appellant's arrest and eventually arraignment in court.

Secondly, in his defence, the appellant contended that he was in possession of a firearm and its rounds of ammunition for purposes of obeying the government's directive for citizens to surrender their illegal firearms. It is common knowledge that such directives come with a general amnesty in favour of those who voluntarily surrender firearms.

It would appear that the learned trial magistrate failed to carefully consider the appellant's defence and ended up convicting him for possession of firearms when there was general amnesty.

Thirdly, the identification of the firearm in possession of the appellant was not positive. This left doubt as to whether the appellant was arrested while in possession of a firearm S/N. 03563 as indicated by the investigations officer (PW3) or firearm S/N. 19907 as indicated by the ballistic expert (PW4).

The contradiction arising was substantial and ought to have been resolved in favour of the appellant who was not under any obligation to prove his innocence.

All in all, the appellant's conviction by the learned trial magistrate was not sound and safe. This explains why the respondent conceded the appeal.

In the end result, the appellant's conviction is hereby quashed and the sentence set aside.

The appellant be released forthwith unless otherwise lawfully held.  
Ordered accordingly.

[Delivered and signed this 24<sup>th</sup> day of May, 2012.]

**J.R. KARANJA.**  
**JUDGE.**