



The chief interviewed the appellant and was told that he (appellant) had a rifle at a place called Kalengorok. The appellant led the chief to a place across river Suam where a G3 rifle and its magazine were recovered on the ground near a fence. Thereafter, the appellant was handed over to the police.

**Peter Lonyang (PW2)**, was bathing at river Suam on the material date at 2.00p.m. When the appellant arrived and enquired about the local market. The two thereafter proceeded to Imenpoet Trading Centre where he (PW2) informed some people that the appellant was a suspicious character. The appellant was then suspected of shop breaking and stealing and was apprehended. A mob of people had the intention of lynching him. He led to the recovery of a G3 rifle and its magazine.

**P.C. Benedict Mwendwa (PW3)** of Kapenguria C.I.D. investigated the matter and later charged the appellant with the present offences.

In his defence, the appellant denied the offences and said that he was at a market in Cherangany where he had gone to meet a girlfriend when Lonyang (PW2) and others appeared and interrogated him with regard to his girlfriend. Members of the public gathered at the scene and claimed that he was a stranger in the area and that shop had been broken into at the market. He was suspected and arrested. He knew nothing about the firearm and ammunition. He saw them for the first time at Kapenguria police station.

In convicting the appellant, the learned trial magistrate heavily relied on the evidence of the chief (PW1) and Lonyang (PW2) to hold that the appellant was in possession of the firearm and ammunition. The two witnesses indicated that the appellant led them to a place where the firearm and ammunition were recovered. After a re-examination of the evidence, it is the opinion of this court that evidence of possession of the firearm and ammunition by the appellant was not strong and reliable enough.

The appellant was not found in actual possession of the items. He is said to have led the chief (PW1) and Lonyang (PW2) to a place where the items were allegedly recovered.

The said place was a ground near a fence or a trench covered with soil in a bush or on land belonging to a resident. The chief (PW1) was not certain as to where the firearm and ammunition were recovered. He resorted to contradicting himself in that regard thereby casting suspicion on the credibility of his evidence.

Lonyang (PW2) was not specific as to where the firearm and ammunition were recovered. He merely said that the appellant led to the recovery of the items at Cherangany area.

From the evidence of the chief and Lonyang (PW2), it was clear that the appellant was apprehended and implicated with the two offences simply because he was a stranger in the area where shops had been broken into and properly stolen from therein. The evidence against him was incapable of establishing beyond reasonable doubt that he was indeed found in possession of a firearm and ammunition.

It may also be instructive to note that the firearm and ammunition were not examined by a ballistic expert for the purposes of ascertaining that they were firearms as defined by the Firearm Act.

At least, this court did not see a report from a ballistic expert. The absence of such a report left doubt as to whether indeed any firearm was found in possession of the accused. This omission was fatal to the prosecution case.

It is therefore the finding of this court that the prosecution case against the appellant was not proved beyond reasonable doubt. His conviction by the learned trial magistrate was unsafe.

In the end result, this appeal succeeds. The appellant's conviction on both counts is quashed and the sentence set aside.

The appellant be set at liberty forthwith unless otherwise lawfully withheld.

**[Delivered & signed this 30th day of October, 2012.]**

**J.R. KARANJA.**

**JUDGE.**