



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HCCRA NO. 117 OF 2006**

**NURA DENG JARSO .....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

***LESIT J.***

**JUDGEMENT**

The appellant was charged with 4 counts. The first count was being in possession of a firearm without a firearm certificate. On the second and third counts was offence of being in possession of ammunition without a firearm certificate. The last count was being unlawfully present in Kenya contrary to section 13(2)(c) of the Immigrations of Persons Act. He pleaded guilty to each of the four counts. He was then sentenced to 10 years imprisonment in all three counts. In the fourth count he was sentenced to one year imprisonment. The learned trial magistrate ordered that the sentences in the four counts should run consecutively bringing the total number of years the appellant should serve to 31 years imprisonment.

The appellant now challenges the sentence imposed against him and has urged the court to reconsider the same.

Mr. Musau for the State stated that the State was not opposed to the court interfering with the sentence. He urged the court to maintain the repatriation order.

The appellant faced three counts which were related in nature as they were all in relation to possession of firearms and ammunition without a firearm certificate.

When considering a sentence a court should take into consideration certain factors into account. Inter alia the court should consider the seriousness of the offence the circumstances of the offence, which aggravates the offence and any other factors which may have a bearing to the nature of the sentence the court should be imposed. The circumstances of the accused person should also be considered including his age and other personal circumstances.

In the instant case the appellant pleaded guilty to all the charges. In so doing he was demonstrating remorsefulness towards the offence. The appellant also saved the court precious time by making it unnecessary for the court to go through the rigors of a trial.

I have noted that the learned trial magistrate in his brief remarks before sentencing merely stated that he had considered the mitigation of the accused and the prosecutors address. He also states that he has considered the seriousness and the nature of the offence. Nowhere has he considered that the accused pleaded guilty to the offence thus saving court's time, and demonstrating his remorsefulness for the offence. The sentence imposed was for this reason excessive.

In regard to the order that the accused should serve the sentences imposed against him consecutively I wish to refer to section 14(3) (a) of the Criminal Procedure Code which provides:

14(3)

**14(3)(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or”**

The appellant was charged under section 4(2)(a) of the Firearms Act. The sentence for this offence is provided under Section 4(3)(a) of the Firearms Act. under that section the sentence provided is a term of imprisonment not less than 7 years and not more than 15 years. Taking that into account the sentence imposed by the learned trial magistrate was more than 15 years in the aggregate, the same is illegal. This is so because the aggregate punishment imposed against the accused is 31 years which contravenes the procedural provisions of section 14(3)(a) of the Criminal Procedure Code that it ought not to exceed 14 years in the aggregate. The reason I say so is that trial magistrate was an SRM with jurisdiction to impose any sentence prescribed in the law. That being the case the first part of s.14(3) (a) applies. The learned trial magistrate could impose any consecutive sentence so long as it did not exceed 15 years. The sentence imposed in the aggregate exceeds the maximum allowed of 14 years under Section 14(3) (a) of the CPC.

This court is mandated to interfere with the sentence in order to correct the obvious error that the learned trial magistrate fell into.

Accordingly, I set aside the order of the learned trial magistrate ordering that the sentence against the accused should run consecutively. I substitute it with an order that the sentences should it run concurrently.

The order of repatriation is sustained.

Those are the orders of the court.

Dated Signed and delivered at Meru this 3<sup>rd</sup> day of February 2011.

**LESIT, J**

**JUDGE**