



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL APPEAL 55 OF 2010

EKWAM EKINIMANANG.....APPELLANT.

AND

REPUBLIC.....RESPONDENT.

(Being an appeal from the original conviction and sentence of S.T. Saenyi – RM in Criminal Case No. 276 of 2010 delivered on 5th May, 2010 at Lodwar)

J U D G M E N T

The appellant, **EKWAM EKINIMANANG** was charged with the offence of **possession of ammunition without a firearm** Certificate contrary to Section 4(2) (a) as read with Section 4(3) (b) of the firearms Act Cap 114 Laws of Kenya. The information of the charge stated that on the 2nd day of May 2010 at Kakuma Refugee Camp in Turkana West District Within Rift Valley Province, was found being in possession of an ammunition with one round of 7.62mmX51mm without a firearm certificate in force. The appellant pleaded guilty to the charge and after trial, he was convicted and sentenced to seven (7) years imprisonment.

Being aggrieved by the conviction and sentence, the appellant has appealed, he relied on the following grounds of appeal:

- (i) That your lordship I pleaded guilty to the charge.
- (ii) That your lordship I came across abandoned ammunition at roadside while walking towards market place at Kakuma II to buy food for my family. I picked it and kept in my pocket without knowing that later it will bring me trouble.
- (iii) That your lordship on reaching the market place, I went to one of the shopkeepers and asked for biscuits since I was hungry. I gave the shopkeeper a fifty shilling note but claimed he had no change where I became impatient after waiting for long.
- (iv) That your lordship a quarrel ensued when the shopkeeper slapped me and I eventually started fighting and the ammunition in my pocket dropped down. The shopkeeper immediately picked it and called out to other shopkeepers to help arrest me.

(v) That your lordship I was handed over to the G. S. U. personnel who beat me up until I became unconscious and later taken to police station and charged with possession of ammunition without certificate.

(vi) That your lordship I was handed a harsh sentence contrary to my expectations as I had already explained the circumstances that led to my arrest to the trial magistrate.

(vii) That your lordship I pray for honourable court to consider my appeal and pass upon me a less punitive sentence.

The state opposed the appeal that it emanated from a plea of guilty and therefore no appeal lines.

In his grounds of appeal, he says the ammunition dropped as he had a fight with the shopkeeper. In his submissions, he said he showed the shop-keeper the ammunition who told him to sit down and offered him a soda.

Was the plea properly taken as stipulated in the case of Adan V R. It was previously taken; even in the grounds of Appeal the accused does not deny not understanding the language. The facts disclosed the offence.

Is the sentence excessive? Considering the principles of sentencing and the fact that the offence was serious and this case holding a minimum sentence, the sentence is reasonable.

The appellant did not demonstrate the need of this court to interfere with both the conviction and the sentence as same was within the law.

The conviction and sentence is upheld and the appeal is dismissed in its entirety.

SIGNED

S. M. MUKETI

JUDGE

Read, dated and signed in the Open Court this 20th day of December, 2011.

SIGNED

S. M. MUKETI

JUDGE