



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Criminal Appeal 124 of 2008

WOODFORD ORLANDO OKUMU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with being in possession of a firearm contrary to section 4 (2) of the Firearms Act Cap 114 Laws of Kenya. The particulars of the offence were that on the 27th day of March, 2007 at Migori Township in Migori District within Nyanza Province the appellant was found in unlawful possession of a homemade gun. The appellant denied the charge and he was tried. Two prosecution witnesses gave evidence and the appellant tendered his defence. The trial court found the appellant guilty of the said offence and convicted him. He was sentenced to 10 years' imprisonment.

Being aggrieved by the said conviction and sentence the appellant preferred an appeal to this court. In his petition of appeal the appellant stated that there was material contradiction between the evidence of the two prosecution witnesses. He further stated that there was insufficient evidence that he was found with the homemade gun. He further contended that he was held in an unlawful custody for a period exceeding 24 hours before he was charged in court and thus his constitutional right was violated.

During the hearing of the appeal the appellant relied on his written submissions.

Mr. Kemo, Senior Principal State Counsel, opposed the appeal. He submitted that there was overwhelming evidence that the appellant was found in possession of a homemade gun. After recovery of the same, it was forwarded to a Firearms Examiner who examined it and confirmed that it was a firearm within the Firearms Act.

The brief facts of the case are as follows:

On the material day Chief Inspector Charles Murithi, PW1, the Deputy District Criminal Investigations Officer, Migori, received a report that there were two people in Migori Town who were suspected to be in possession of a gun. They were said to have been moving from one place to another. Together with Constable Wolasa, PW2,, and two other police officers they proceeded to Migori town. Near a hotel known as Girango, they arrested the appellant together with one other person. The appellant was carrying a yellow bag and when the police searched the same, they found an imitation of a firearm. An exhibit memo was prepared and together with the homemade gun they were forwarded to a Firearms Examiner. A report of the Examining Officer was submitted to court by PW1. The

Firearm Examiner formed the opinion that the homemade gun was a firearm in terms of the **in terms of the Firearms**. The homemade gun was also produced before the trial court by PW1.

The evidence of PW1 was corroborated in all material aspects by PW2.

In his defence, the appellant denied having been found in possession of the homemade gun. He alleged that his arrest was a revenge mission, having fought with one of the police officers who participated in the arrest. However, in his cross-examination of PW1 and PW2 the appellant did not raise the issue of any grudge between him and P.C. Abdalla.

Having considered the evidence of PW1 and PW2, it is clear that the appellant was found in possession of a homemade gun. The same was examined by a Firearms Examiner and certified to be a firearm within the provisions of the **P.C. Abdalla**. The trial court considered the appellant's defence and properly dismissed the same.

As regards the alleged contravention of the appellant's constitutional rights, the trial court held that there was an explanation given by the police as to why he was not taken to court until 2nd of April 2007, a period of about five days. The explanation was that he was being investigated for the offence of robbery with violence which is a capital offence. The court accepted that explanation as reasonable and satisfactory. I entirely agree.

As regards the sentence that was passed, the same cannot be said to be harsh or excessive. The learned trial magistrate exercised his discretion in passing the same.

All in all, I find no merit in this appeal and dismiss the same in its entirety.

DATED, SIGNED AND DELIVERED AT KISII THIS 14TH DAY OF MAY, 2010.

D. MUSINGA
JUDGE.
14/5/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Mutuku for the state.

Appellant present

COURT: Judgment delivered in open court on 14th day of May, 2010.

D. MUSINGA
JUDGE.