



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Criminal Appeal 79 of 2008**

*(From original conviction and sentence in Criminal Case No.2651 of  
2006 of the Chief Magistrate's court at Nakuru - W. KAGENDO, SRM)*

**JULIUS ONESMUS OMUKOTO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**JULIUS ONESMUS OMUKOTO**, the appellant, was with 6 others charged with stealing from a person and robbery with violence contrary to **Sections 279(a)** and **296(2)** of the **Penal Code** respectively and being in possession of a firearm and ammunition contrary to **Sections 34(1)** and **4(2)** as read with **3(2)** of the **Firearms Act** respectively. He was acquitted of the charges of stealing from a person and robbery but convicted of being in possession of a firearm and ammunition and sentenced to serve 7 years imprisonment on each of those two counts. He has appealed against that conviction and sentence.

At the hearing of the appeal Mr. Nyakundi for the state conceded it on the ground that the evidence tendered was at variance with the charges.

Having perused the record I agree with the learned state counsel that the appellant's conviction cannot be allowed to stand. Whereas the charges allege that the firearm and ammunition were recovered from the appellant on 24<sup>th</sup> October 2006 the evidence tendered shows that the recovered items were sent to the ballistic expert for analysis on 2<sup>nd</sup> October 2006. Those items could not have been recovered from the appellant about 25 days after they had been sent to the ballistic expert. I agree with both the defence and state counsel that that discrepancy was fatal to the prosecution case. Consequently, I allow this appeal, quash the convictions on those two counts and set aside the sentence. The appellant shall be set free forthwith unless otherwise lawfully held

**DATE and DELIVERED this 14<sup>th</sup> day of July, 2010.**

**D. K. MARAGA**

**JUDGE.**