



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

**Criminal Revision 1 of 2010**

**REPUBLIC .....PROSECUTOR.**

**VERSUS**

**SAMSON LOTINYANG.....1ST ACCUSED.  
JOSEPH LONGOLEPUM ..... 2ND ACCUSED.**

**RULING.**

My attention has been drawn to the order and/or sentence of Kapenguria Principal Magistrate court in Criminal case No. 645 of 2009. **REPUBLIC VS. SAMSON LOTINYANG & JOSEPH LONGOLEAPUM.**

The charge reads: Being in possession of ammunition without a Firearm certificate contrary to section 4 (2) (a) as read with section 4 (3) (a) of the Firearm Act cap 114 Laws of Kenya.

The particulars are that on the 19<sup>th</sup> day of July, 2009 at Ortum Trading Centre in West Pokot District within the Rift Valley Province, without reasonable excuse were jointly found in possession of four (4) rounds of 7.62 mm special caliber ammunition without a firearm certificate.

**The record of proceedings are as follows:-**

**“21/7/2009.**

Coram – Before G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 1 & 2 present in person.

Interpretation – English to Pokot by Jenipher – SCO.

The substance of the charge and every element of it has been explained by the court to the accused person who being asked whether he admits or denies the truth of every element of the charge replies as follows:-

Accused 1:- False.

Accused 2:- False.

**G.M.A. ONG’ONDO.**

**PM.**

Court:- Plea of Not guilty entered for accused 1 & 2. Mention on 4/8/2009. Hearing on 8/9/2009. Each accused may sign bond of Ksh. 25,000/= with surety of like amount or remanded in custody.

**G.M.A. ONG'ONDO.**

**PM.**

**4/8/2009.**

Coram – Before R.M. Wshika – RM.

CP – CIP Okumu.

CC – David.

Accused both present.

Hearing on 8/9/09. Mention on 18/8/2009.

**R.M. WASHIKA.**

**RM.**

**4/8/2009.**

**18/8/2009.**

Coram – Before G.M.A. Ong'ondo – PM.

CP – CIP Okumu.

CC – David

Interpretation – English to Pokot by David. – CC.

Accused 1 & 2 present.

Accused 1:- I wish to change plea. I had not understood charge. I had been beaten.

**G.M.A. ONG'ONDO.**

**PM.**

CP:- May it be 19/8/2009 for exhibits.

**G.M.A. ONG'ONDO.**

**PM.**

Court:- Change of plea for accused 1 for 19/8/2009 and hearing for accused 2 on 8/9/2009 and further mention 1/9/2009.

**G.M.A. ONGONDO.**

**PM.**

**19/8/2009.**

Coram - before R.M. Washika – RM.

CP – Okumu.

CC – David.

Accused 1 present.

Accused 2 present.

Inter:- Engl./Pokot by David.

Accused 1:- I want to be reminded of charge.

**Court:-** Substance of the charge sheet and every element of it read to accused in pokot language that he understands and he replies as follows:-

Accused 1:- True I had ammunitions.

Court:- Plea of guilt entered.

**CP:-** On 19/7/2009 at Ortum trading center, police officers received a tip off that accused with others who used to live under a tree with luggage, beddings under a tree as a temporal home. Police were told and they dashed and a search was done where each was told to stand by his belonging.

Accused was found with 4 rounds of ammunitions on interrogation. Accused denied but later he accepted. Accused did not have certificate to permit him to have ammunitions.

Accused 1 was arrested. I produce 4 ammunitions as exhibit. Exhibit 1a, b, c, and d as the said ammunitions.

The same are used in A.K. 47 guns. An example shown to court. It is commonly used around the area by police.

Accused:- Facts are true.

Court:- Convicted on plea of guilty.

**Pros:-** Accused 1 is a 1<sup>st</sup> offender but it is a serious offence for this is an area where banditry crime are rampant and cattle rustling and they do kill.

**Accused in Mitigation:-** My brother is in ward. I am sorry. I wont repeat.

**Court:-** I have considered accused's mitigation and the nature of offence is serious, due to him having ammunition and without certificate, to be a lesson to others, accused having pleaded guilty is fined Ksh. 60,000/= or 1 years in prison.

Right of appeal within 14 days.

Pros:- May the rounds of ammunition be returned to O.C.S. for proper disposal.

**R.M. WASHIKA.**

**RM.**

**19/8/2009.**

**2/9/2009.**

Coram – before G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Interpretation – English/Kiswahili.

Accused 2 present.

Court:- Hearing on 8/9/2009 for accused 2.

**G.M.A. ONG’ONDO.**

**PM.**

**8/9/2009.**

Coram – Before G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – Jenipher.

Accused 2 present in person.

Interpretation – Engl/Pokot by David.

Accused 1:- I wish to change plea now.

**G.M.A ONG’ONDO.**

**PM.**

CP:- I have file from police.

**G.M.A. ONG’ONDO.**

**PM.**

COURT:- Both prosecutor and accused 2 ready.

**G.M.A. ONG’ONDO.**

**PM.**

Accused 2:- I deny charge.

**G.M.A. ONG’ONDO.**

**PM.**

**Court:-** Plea of not guilty entered for accused 2 hence time out. Hearing on 3/11/2009 for accused 2. Further mention

on 22/9/2009.

**G.M.A. ONG'ONDO.**

**PM.**

**8/9/2009.**

**22/9/09.**

Coram – G.M.A. Ong'ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present in person.

Interpretation – Engl/Kiswahili.

Accused 2:- I have to change plea now.

**G.M.A. ONG'ONDO.**

**PM.**

CP:- May it be on 23/9/2009 for accused 2.

**G.M.A. ONG'ONDO.**

**PM.**

**Court**:- Change of plea on 23/9/2009 for accused 2.

**G.M.A. ONG'ONDO.**

**PM.**

**22/9/2009.**

**6/10/2009.**

Coram – G.M.A. Ong'ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present in person.

Interpretation – Engl/Kiswahili.

**CP**:- I have no prosecution file and exhibits.

**Court**:- Facts 8/10/2009 for accused 2.

**G.M.A. ONG'ONDO.**

**PM.**

**8/10/2009.**

Coram – G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present in person.

Interpretation – engl/Pokot by David.

**Accused 2:-** I wish to change plea. I had not understood charge. I feared to plead guilty.

**G.M.A. ONG’ONDO.**

**PM.**

**Court:-** Accused reminded of the substance of the charge and every element of it in Pokot language that he understands and speaks and he replies thereto in Pokot language as:-

**Accused:-** True I had rounds of ammunitions without certificate.

**G.M.A ONG’ONDO.**

**PM.**

**Court:-** Plea of guilty entered for accused 2 only.

**G.M.A. ONG’ONDO.**

**PM.**

**CP Okumu:-** On 19/7/2009 at Ortum trading Centre in West Pokot District accused 2 and others were intercepted by police officers on patrol found them with four (4) rounds of 7.62 mm special caliber ammunitions. Accused 2 had them in paper bag. These are the 4 rounds of ammunitions live – Exhibits 1 (a) to (d). I pray for time to get ballistic report to support facts. May it be next month.

**G.M.A. ONG’ONDO.**

**PM.**

Accused 2:- No objection.

**G.M.A. ONG’ONDO.**

**PM.**

Court:- further facts 9/11/2009 and further mention on 22/10/2009.

**G.M.A. ONG’ONDO.**

**PM.**

**8/10/09.**

**22/10/2009.**

Coram – G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present in person.

Interpretation – Engl/Pokot by David.

CP:- Report not yet obtained until end of November, 2009.

**G.M.A. ONG’ONDO.**

**PM.**

Court:- Facts 30/11/2009 and further mention 5/11/2009.

**G.M.A. ONG’ONDO.**

**PM.**

**3/11/2009.**

Coram – G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present.

Interpretation – Kiswahili.

Hearing on 30/11/2009 facts accused 2 . Mention on 17/11/2009.

**R.M. WASHIKA.**

**RM.**

**3/11/2009.**

**17/11/2009.**

Coram – G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present.

Interpretation – Kiswahili.

Court:- Hearing on 30/11/2009.

**R.M. WASHIKA.**

**PM.**

**17/11/2009.**

**30/11/2009.**

Coram – G.M.A. Ong’ondo – PM.

CP – CIP Okumu.

CC – David.

Accused 2 present in person.  
Interpretation – Engl/Kiswahili.

CP:- Facts not ready as exhibits not availed from Marich and Nairobi. I pray to adjourn.

Court:- Facts on 14/12/2009.

**G.M.A. ONG'ONDO.**

**PM.**

**30/11/2009.**

**14/12/2009.**

Coram – G.M.A. Ong'ondo – PM.

CP – CIP Okumu.

CC – Jenipher.

Accused 2 present in person.

Interpretation – Engl./Pokot.

Accused 2:- I wish to plead guilty. I had not understood charge well.

**G.M.A. ONG'ONDO.**

**PM.**

**Court:-** Wish noted. Accused 2 is reminded of the substance of the charge and every element of it in Pokot language that he understands and he speaks and he replies thereto in Pokot language as:-

Accused 2:- True I was found with 4 rounds of ammunitions without certificate.

**G.M.A. ONG'ONDO.**

**PM.**

Court:- Plea of guilty entered for accused 2.

**G.M.A. ONG'ONDO.**

**PM.**

**Pros:-** On 19/7/2009 at Ortum Trading Center under a tree, police were tipped that accused 2 and his co-accused (convict) were in possession of firearms namely rounds of ammunitions. The police went to the scene and on search, recovered four (4) rounds of ammunitions of 7.62 mm from both of them. They had no certificates thereof. Both accused arrested and escorted to Kapenguria police station. The police prepared exhibit memo form of 14/10/2009 (Exh. 1) and sent 4 rounds of ammunitions (Exh 2) (a) to (c) and Ballistic report of 16/10/2009 shows that exhibits 2 (a) to (d) were ammunitions under the fire Arms Act (Cap 114) Laws of Kenya – Exhibits 1 to 3 admitted. Accused 2 charged hereof.

**G.M.A. ONG'ONDO.**

**PM.**

Accused 2:- Facts are true.

**G.M.A. ONG'ONDO.**

**PM.**

Court:- Accused 2 convicted on own plea of guilty.

**G.M.A. ONG'ONDO.**

**PM.**

Pros:- Offence serious and he may be treated as 1<sup>st</sup> offender.

**G.M.A. ONG'ONDO.**

**PM.**

**Accused 2 in Mitigation:**- My father is aged and hospitalized. My mother is aged, too, and they depend on me. I am remorseful.

**G.M.A. ONG'ONDO.**

**PM.**

**Court:**- I consider plea of guilty by accused 2, mitigation, prosecution address on sentence and seriousness of the offence owing to minimum and maximum penalty for it, hence I have to comply with the law. Accused 2 shall serve seven (7) years in prison. Right of appeal explained to accused 2 in Pokot language.

**G.M.A. ONG'ONDO.**

**PM.**

**14/12/2009.**

**Pros:**- Accused 1 is a convict serving sentence imposed by court 2 on 19/8/2009.

**G.M.A. ONG'ONDO.**

**PM.**

**Order:**- Accused 1 was sentenced to a fine of Ksh. 60,000/= in default one (1) year in prison by Hon. R.M. Washika (RM) sitting in court 2 on 19/8/2009. However, the section under which accused 1 and 2 are charged, prescribes minimum and maximum prison terms for the offence. Therefore, I forward record to High Court to exercise its powers on revision of sentence imposed on accused 1 on 19/8/2009, by the Hon. RM, pursuant to section 363 (1) & 92) CPC.

**G.M.A. ONG'ONDO.**

**PM.**

**14/12/2009.”**

Pursuant to section 361 (1) and 362 (2) of the CPC the Principal Magistrate Kapenguria (G.M.A. Ongo'ondo) forwarded the original file with two typed copies of the proceedings with a view to revising the sentence.

I have looked at section 4 (2) (a) as read together with section 4 (3) (a) of the Firearm Act (Cap 114) Laws of Kenya. Having done so I note that the section aforesaid prescribes minimum and maximum prison terms for the offence as charged. I equally note that accused one (1) was sentenced to pay a fine of Ksh. 60,000/= and in default one (1) year imprisonment.

Against that backdrop, in exercise of my powers under sections 362 of the Criminal Procedure Code, I enhance the sentence to 8 years imprisonment.

I direct that this file to be transferred to the Principal Magistrate, Kapenguria for compliance. I further direct the OCPD West Pokot to facilitate.

Dated and delivered at Kitale this ..... day of ..... 2010.

**N.R.O. OMBIJA.**

**JUDGE.**