

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Criminal Appeal 25 of 2006

MOSES JUMA SIMIYU..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of W.A. Juma – SPM in Criminal Case No. 795/2006 delivered on 1st March, 2006 at Kitale)

J U D G M E N T

This is an appeal against sentence only, as the appellant had pleaded guilty. He had therefore been convicted on his own said plea of guilty, for the offence of being in possession of an imitation firearm contrary to section 34 (1)(2) of the Firearms Act (Cap 114)

The appellant was arrested at Rock Bar, after police officers who were on duty, at about midnight were informed that someone had a gun, at that bar. The police officers rushed to the scene, where they found the appellant.

A search on the appellant revealed an imitation firearm wrapped in polythene, and concealed in his coat.

After confirming the accuracy of the facts giving rise to the offence, the appellant was convicted. Then, when he was given an opportunity to say something in mitigation, the appellant told the court that he had nothing to say.

It is thereafter that he was sentenced to 10 years imprisonment.

At the hearing of his appeal the appellant basically asserted that the sentence meted out against him was too harsh. Interestingly, the appellant accused the learned trial magistrate of having failed to give consideration to his mitigation.

As the appellant had chosen to say that he had nothing to say in his mitigation, he cannot now accuse the trial court of failing to take into account his mitigation.

Having given due consideration to the single issue canvassed by the appellant, I find that the sentence meted out was within the law.

The learned state counsel expressed the view that the trial court ought to have given to the appellant, the minimum sentence prescribed by law. His reason for expressing that view was that the appellant had saved the court's time, by pleading guilty to the offence.

On my part, I know of no rule that if an accused person did plead guilty, the court should give him the minimum sentence prescribed.

The appellant did not demonstrate to me that the trial court had taken into account some extraneous factors when sentencing him. Also the appellant did not demonstrate to me that the trial court had not taken into account some relevant factor, in the course of handing down the sentence now complained of.

In the circumstances, even if I should feel that a more lenient sentence could have been more deserving, there is no basis, in law, for substituting my own assessment for the discretion exercised by the learned trial magistrate. Accordingly, I find no merit in the appeal. It is therefore dismissed, and I uphold both conviction and sentence.

Dated and Delivered at Kitale, this 9th day of October, 2007.

FRED A. OCHIENG.

JUDGE.