



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 257OF 2003

(From original conviction and sentence of the Senior Principal Magistrate's Court at Naivasha in Criminal Case No. 719 of 2003 – M. M. Muya [S.P.M.]

PAUL NJUKI MURAGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Paul Njuki Murage was charged with the offence of robbery with violence contrary to **Section 296(2) of the Penal Code**. He was also charged with two counts of being found in possession of a firearm without a firearm certificate contrary to **Section 4(2) (a) of the Firearms Act**. The particulars of the offence were that on the 7<sup>th</sup> of March 2003 at Kabete within Nairobi Province the appellant was found in possession of a Tokalev Pistol and nine rounds of ammunition without a Firearm certificate. The appellant pleaded not guilty to the charges and after a full trial, was acquitted of the charge of robbery but was convicted of the charge of being found in possession of the pistol and the nine rounds of ammunition. He was sentenced to serve ten years imprisonment on each of the two counts. The sentences were ordered to run concurrently. Being aggrieved by his conviction and sentence the appellant appealed to this court.

In his petition of appeal, the appellant challenged his conviction and sentence by the trial magistrate. However at the hearing of the appeal, the appellant abandoned his appeal against conviction and instead pleaded for the reduction of sentence. He submitted that he has been in prison for a period of three years during which time he had reformed. He had also acquired vocational training which would enable him to be a responsible citizen if he is released from prison. He told the court that he was a first offender and had become ill while in prison. He submitted that he was a diabetic and also had suffered from tuberculosis. He pleaded with the court to exercise leniency on him and stated that the firearm and ammunition which was found in his possession were given to him by people whom he now recognizes to have been a bad influence on him. He urged this court to reduce the custodial sentence that was imposed upon him.

Mr. Koech, Learned State Counsel supported the sentence imposed upon the appellant by the trial magistrate. He submitted that the appellant was found with a pistol and six rounds of ammunition after being suspected of having been involved in armed robbery. He submitted that the appellant was lucky not to have been convicted of the more serious offence of robbery with violence because of lack of evidence. He further submitted that the appellant had been recognized by one of the victims of the robbery with violence but the trial magistrate had found that there was no sufficient evidence to sustain a conviction on the charge of robbery with violence. He submitted that the firearm which was found in possession of the appellant was a lethal weapon which was in possession of the appellant illegally. He urged this court to disallow the appeal on sentence.

This being a first appeal, this court is mandated to reconsider and to re-evaluate the evidence adduced by the prosecution witnesses and that offered by the appellant in his defence so as to arrive at an

independent determination whether or not to uphold the conviction of the appellant. In this case, where the appellant is not appealing against conviction, this court is required to re-evaluate the grounds put forward by the trial magistrate in sentencing the appellant. In re-evaluating the decision on sentence this court has to put in mind the fact that in sentencing an accused person, a trial magistrate's court is exercising judicial discretion which can only be interfered with on appeal if it is proved that the said sentence was illegal or was excessive and harsh in the circumstances of the case.

In this appeal, the appellant admits being found in possession of a firearm with nine rounds of ammunition without a firearm certificate. He was sentenced to serve ten years imprisonment on each of the two counts that he was convicted. The sentences were ordered to run concurrently. **Section 4(3)(a) of the Firearms Act (Cap 114 Laws of Kenya)** provides that any person who is convicted of being in possession of a firearm as defined by **Section 2** of the said Act is liable to be sentenced to serve a term not less than seven years imprisonment and not more than fifteen years imprisonment. In this appeal, the appellant was found in possession of the firearm and ammunition in circumstances that suggested that he intended to use it for unlawful purpose. In my considered opinion, the sentence of ten years imprisonment which was meted out on the appellant by the trial magistrate was neither harsh nor excessive.

In the circumstances therefore, I am not prepared to interfere with the exercise of judicial discretion by the trial magistrate when he sentenced the appellant to serve the said term of imprisonment. For the reasons stated above, I find no merit in the appeal filed by the appellant on sentence and consequently dismiss it. I have considered the mitigation of the appellant and I am of the view that the offence merited the punishment. The conviction of the appellant and the sentence imposed by the trial magistrate is hereby confirmed. It is so ordered.

**DATED at NAKURU this 10<sup>th</sup> day of May 2006.**

**L. KIMARU**

**JUDGE**