

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 14 of 2005

PAUL KIPLIMO SANG.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the original conviction and sentence passed against him in Nakuru Chief Magistrate’s Criminal Case No.3591 of 2004. In that case, the Appellant was charged for Failing to take precautions to ensure the safe custody of a Firearm, contrary to Section 18(3) as read with Section 18(4) of the Firearm Act, Cap.114, Laws of Kenya. The second charge against the Appellant is the offence of Failing to take precautions to ensure the safe custody of ammunition contrary to Section 18(3) as read with Section 18(4) of the Firearm Act, Laws of Kenya.

The facts of the prosecution case as stated in the charge sheet for the first Count are as follows:-

“On unknown date between 4th August, 2004 and 26th August, 2004, at Nakuru Township in Nakuru District within Rift Valley Province failed to take precaution to ensure safe custody of a Firearm Serial No. PA 10596 make Tolkarer Pistol which was lawfully issued to him.”

The facts of the prosecution case as stated in the charge sheet for the second Count are as follows:-

“On unknown date between 4th August, 2004 and 26th August, 2004, in Nakuru Township in Nakuru District within Rift Valley Province failed to take precautions to ensure safe custody of eight(8) rounds of ammunitions of 7.63mm calibre which were lawfully issued to him.”

During the hearing of the appeal, the Appellant recalled that he had pleaded “Guilty” to the charges. Apart from the above, the Appellant informed the Court that he has ulcers and hence cannot stand the food in prison. In addition to the above, the Appellant also informed the Court that he is the sole bread winner in a family that is tender and also needs him. That apart, the Appellant also informed the Court that his father passed away.

He lamented that the learned Magistrate never gave him an option of a fine. On the other hand, Mr. Koech, Senior State Counsel submitted that since the Appellant never challenged the conviction, he left the issue of sentence to the Court.

This Court has carefully perused what has been stated by the Appellant and the reply by Mr. Koech on behalf of the State. Apparently, the Appellant has a young family and a sick wife. Purely on humanitarian grounds, the sentence of 1 year imprisonment is reduced to the period already served for each charge.

The Appellant should be set released forthwith unless lawfully held.

Those are the orders of this Court.

MUGA APONDI

JUDGE

Judgment read signed and delivered in open Court In the presence of Mr. Gumo and the Appellant.

MUGA APONDI

JUDGE

19th October, 2005