

REPUBLIC OF KENYA

Peter Karanja Gathu v Republic

High Court, at Kericho February 21, 2004

Musinga Ag J

Criminal Appeal No 66 of 2002

February 21, 2004, Musinga Ag J delivered the following Judgment.

The Appellant was charged with two counts of being in possession of a firearm and ammunition without a FireArm Certificate Contrary to Section 4(2) as read with subsection 3(a) of the Firearms Act Cap 114.

He was tried and found guilty and was sentenced to four years imprisonment on each count but the sentences were to run concurrently. He appealed against the conviction only. He was unrepresented and his main submission was that the learned magistrate erred in law by relying on evidence of PW1, PW2 and PW3 who had been told by an informer that he was having a firearm yet the informer was not called to testify. He insisted that the informer should have been called to testify.

Mr. Mutuku, the learned Senior State Counsel in response to that argument conceded that PW1, 2 and 3 relied on the evidence of an informer whose arrest led to the arrest of the Appellant. He, however, submitted that it was trite law that evidence of an informer is privileged. I concur with him that a policeman cannot be compelled to disclose his informer and neither can an informer be called to testify. I therefore reject the first ground of appeal.

The Appellant also submitted that the Ballistic expert confirmed that the Appellant had nothing to do with the firearm. He further argued that the ballistic expert (PW5) did not say that the firearm had any connection with any robbery and so according to the Appellant, that showed the gun belonged to the police and because of a grudge that existed between the police and the Appellant, the police framed him up.

I have looked at the evidence of the Ballistic expert and his evidence related to the laboratory tests that he did on the firearm that had been recovered from the Appellant. He was not required to state whether the Appellant had the gun or not. It was also not his responsibility to dust pistols for fingerprints. Besides, the Appellant did not put to the witness any question to do with the issues which he is now raising in his appeal.

The Appellant did not put any questions to any of the police officers who testified regarding the alleged grudge and so it appears that the issue was raised in the Appellant's defence as an afterthought.

I see no basis of interfering with the judgment of the trial magistrate and the appeal is therefore dismissed.