



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

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 79 OF 1998**

**(Being an appeal against the Judgment of the Chief Magistrate's Court in  
Criminal case No. 1076 of 1998, by G. A. Ndeda (Mrs.) Senior Principal  
Magistrate, delivered on 14.4.1998 in Eldoret.)**

**WILLIAM RONALD KAMIA.....APPELLANT**

**VERSUS**

**REPUBLIC.....**

**.....RESPONDENT**

**JUDGMENT**

William Donald Kamia was first arraigned before the Senior Principal Magistrate, Eldoret on 14/4/1998, where he was charged jointly with others, with the offences of robbery with violence, contrary to section 296 (2) of the Penal code, being in possession of a firearm without a firearm certificate, and thirdly being in possession of ammunition without firearm certificate both offences which are contrary to section 4(1) of the Firearms Act Cap 114 of the Laws of Kenya.

When the charges were read out and explained to all the accused persons, Kamia who was the 2nd accused then, pleaded not guilty to the first charge. He however, pleaded guilty to the 2nd and 3rd charges, which pleas he confirmed after the facts were laid before the court by the prosecution.

Briefly, the facts of the cases were that on 10.3.1998 detectives from C.I.D. Eldoret were investigating a series of robberies committed in Eldoret, from 1997 and while doing so, they arrested several suspects including Kamia. The suspects were taken to Eldoret Police Station where after being questioned, Kamia admitted to having 2 rifles and 179 rounds of 7.62mm ammunition. He led police to Langas Estate Eldoret where he removed 2 rifles and the ammunitions. He was then taken to the Police Station and was charged with the offences of possessing the firearm and ammunition without a firearms certificate. He was then convicted of the 2 offences on his own pleas of guilty and sentenced on the same day, to serve 10 years and 8 years imprisonment respectively. The sentences were to run concurrently.

Kamia who does not contest the convictions is now before this court on appeal, in which he had originally sought an order for retrial, which order he abandoned when he appeared before me, and chose instead to pursue his prayer in his supplementary petition, that the sentences against him be set aside and instead, he be granted an option of a fine

He acknowledges the fact that the convictions followed his own pleas of guilty, which again he

acknowledges, were unequivocal. In such circumstances, an appellant can only take issue with the sentence, which the court would interfere with, only if it was not legal or if it was manifestly excessive, given the circumstances of the case. This is well spelt out in section 348 of the Criminal Procedure Code, which stipulates that:

*“No appeal shall be allowed in the case of an accused who has pleaded guilty and has been convicted on that plea by subordinate court, except as to the extent or legality of the sentence”.*

Miss Oundo, learned state counsel, urges this court to dismiss the appeal, as both the convictions and the sentences were proper. Section 4 (1) of the cap 114, stipulates that:

“Subject to this Act, no person shall purchase, acquire or have in his possession any firearm or ammunition unless he holds a firearm certificate in force at the time.

*(2) if any person -*

*(a) purchases, acquires or has in his possession any firearm or ammunition without holding a firearm certificate in force at the time, or otherwise than as authorized by a certificate, or, in the case of ammunition, in quantities in excess of those so authorized; or*

*(b) fails to comply with any condition subject to which a firearm certificate is held by him,*

he shall, subject to this Act, be guilty of an offence”.

In my mind, the Magistrate has a wide discretion in sentencing an offender under the above section of the law and this court can only interfere with the sentence if the trial Magistrate misguided herself when passing the sentence, or where she misapprehended the law. The Court of Appeal’s stand on the matter is that “an appellate court would only interfere with a sentence imposed by a trial Judge if there had been a miscarriage of justice ” (Njenga v Republic (1980) KLR 89). I hold that the same would rightly apply to a sentence imposed by a trial Magistrate.

This brings me back to Section 4 of the Firearms Act, which the appellant referred to when he urged the court to set aside the custodial sentence and to impose a sentence of a fine instead. Perusal of the said section reveals that there is a proviso to the custodial sentence, which clearly stipulates that:

*“..when the offence for which the person is convicted (not being an offence in relationship to a prohibited weapon or to any ammunition therefore) is failure by neglect to renew a firearms certificate such person shall be liable to pay a fine at the rate of five hundred shillings per day for every day or part thereof during which his default continues but so that no person shall be liable to pay a fine greater than the maximum provided by this sub section and if such a fine is not paid then to imprisonment for a term not exceeding two years”*

When called upon to plead after the facts had been laid down as a aforementioned, he admitted the facts and at no time did he inform the court that he was licensed to have the firearms and the ammunition or that he had only forgotten or neglected to renew them, nevertheless, the issue of non- renewal of certificates did not form part of his mitigation for if that had been the case, the option of a fine would have been considered, and perhaps acceptable.

But the situation was different here, and I need not reemphasize the fact that the appellants arrest and subsequent recoveries were made after a spate of robberies in Eldoret. Such being the case then, the option of a fine could not have applied and in the circumstances, I find that the sentence was proper and legal and that there was no miscarriage of justice at all, in awarding a custodial sentence. The appeal is thus dismissed and the convictions and sentences are hereby upheld.

Dated and delivered at Eldoret this 17th day of June 2004.

**JEANNE GACHECHE**

**JUDGE**