



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 64 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 1595 of 1999 of the Senior Principle Magistrate's Court at Mombasa – H. Njiru –SRM)

EVANS ORINA OMANGA.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was arrested and charged with others of offences under the Firearms Act Cap. 114 Laws of Kenya.

The appellant alone faced a charge of unlawfully being in possession of a Firearm, Ceska pistol serial No. F.1781 without a firearm certificate. There was also count II being preparation to commit a felony contrary to section 308 (3) (b) of the Penal Code. The appellant now appeals against conviction and sentence and sets out his grounds in his petition of appeal namely that the officer who recovered the pistol and ammunition was not called to give evidence, the prosecution evidence was unreliable, that investigation of the case was shoddy, that his defence was not considered. The prosecution case is that the Firearm Ceska Serial No. F. 1781 with 14 rounds of ammunition went missing from the Armoury both at Mbaraki and Central Police Station where it should have been kept. The disappearance was discovered on 14/4/99.

On 20/4/99, PC Roba Bashuna with CPL Roda, Sgt. Kauda, PC. Joel Langat and PC Onditi were on ordinary duty patrol in Mombasa. They had information that a robbery would take place on Moi Avenue at Salambo Day & Night Club. They were given the description of the suspected men. As they laid ambush two persons fitting the descriptions came. The Policemen stopped them and carried a search of them. A Ceska pistol No. F1781 with 4 rounds of ammunition was found on the body of the Appellant. The appellant was arrested together with others and taken into custody. After investigations he was (with others) charged with the offences I have mentioned above. The scene is said to have been on Moi Avenue in front of Salambo Day & Night Club. The offences of possession of Firearm and Ammunition were proved. At no time did the appellant produce a certificate for the firearm or ammunitions as required under Firearms Act Cap 114 Section 4(1) (a) and 4(2) (a) respectively.

In his defence the appellant denied the offences and said the firearm was in the hands of Police. "I could not have received it." Even in his cross-examination of P.W.2 he suggested that the pistol belongs to Police Station. On cross-examination of prosecution witness it is clear that the accused and others were arrested at the Salambo Day & Night Club. He was carrying the pistol without a certificate and he must

have been ready to commit any offence even using violence with the gun. His defence does not create any doubt on the prosecution evidence. Prosecution witnesses were found to be truthful and reliable by the Trial Magistrate and I find he was correct in believing them. The fact that the appellant was carrying a stolen gun is sufficient proof that he was with the others preparing to commit a felony for these reasons I find that the offences as charged were proved beyond reasonable doubt. I therefore find no merit in the grounds of appeal. The sentences, which are to run concurrently, are to the maximum of 7 years. I do not find the same excessive or harsh and I do not interfere.

I therefore dismiss this appeal.

Dated this 22nd day of December 2003.

JOYCE KHAMINWA

JUDGE

Judgment Read in the presence of:

Appellant

Ms. Mwaniki.

The appellant to be supplied with a typed copy of Judgment.

JOYCE KHAMINWA

JUDGE

Dated this 22nd day of December 2003