



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO 1120 OF 2001

(From Original Conviction (s) and Sentence (s) in Criminal Case No.1571 of 2000 of the Chief Magistrate's Court at Nairobi Mary Mugo(Mrs)

FRANCIS KIBIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO 1121 OF 2001

FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL

CASE NO 1571 OF 2000 OF THE CHIEF MAGISTRATE'S COURT AT NAIROBI

MICHAEL ATANGA ROTI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

These appeals are consolidated. The two appellants faced a joint charge with five counts jointly and severally.

In count one, they both faced the offence of preparation to commit a felony C/s 308(1) of the Penal Code.

In count three, they both faced the charge of being in possession of a firearm without a firearm certificate C/s 4(2) of the Firearms act cap 114 Laws of Kenya.

Count five related to both of them being in possession of suspected stolen property C/s 323 of the penal code.

Counts 2 and 4 only affected the second appellant herein Michael Atonga Roti and related to possession of firearm and ammunition respectively.

The two having denied the offences a full trial followed after which they were convicted on all the offences as charged. Being aggrieved by the said convictions and sentences they appealed.

At the hearing of the appeals, the learned counsel for the republic submitted that he did not support the conviction and sentence in respect of the first count on the basis that there was not sufficient evidence to sustain the same and the sentence was illegal.

Having evaluated the evidence adduced in respect of that offence (preparation to commit a felony), I with respect, agree that, the conviction cannot be sustained. There was no overt act displayed by either of the two appellants to establish beyond any doubt that they were preparing to commit the alleged offence. On the sentence, the minimum sentence was done away with by Act No.22 of 1987.

In addressing counts 2,3,4 and 5, the learned trial magistrate went over the evidence of the police officers who accosted the appellants searched them and the motor vehicle and how recoveries of firearms were done. They also noticed the discrepancies in respect of the registration numbers of the motor vehicle.

The officer from the Kenya Revenue authority gave evidence as to the true identity of the motor vehicle. My own assessment is that the appellants deliberately concealed the registration numbers, re-imposed others, with the full knowledge that the same did not belong to the said car.

The four remaining counts, going by the evidence, were proved beyond any reasonable doubt and the convictions were well founded. The sentences can not be said to be excessive in any way. If anything they were on the lower side.

Accordingly, appeal against conviction and sentence in count one is allowed in favour of both appellants while that in respect of counts 2,3,4, and 5 (five) is dismissed.

Orders accordingly.

Dated and delivered at Nairobi this 23rd day of May, 2002.

MBOGHOLI MSAGHA

JUDGE

Judgement read in open court in the presence of Mr Monda for the state and the appellants.

MBOGHOLI MSAGHA

JUDGE

23/5/2002