



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO. 631 OF 2002

From Original Conviction(s) and Sentence(s) in Criminal Case No. 690 of 2001 of the Snr. Principal Magistrate's Court at Kibera(W. Karanja (Mrs)

MIKTAR SAMON SHEIKH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 632 OF 2002

(From original conviction and Sentence in Criminal Case no. 690 of 2001 of the Senior Principal Magistrate's court at Kibera(W. Karanja (Mrs)

AHMED KORIYOW ALI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 633 OF 2002

(From Original conviction and sentence in criminal case NO. 690 of 2001, of the Senior Principal Magistrate's Court at Kibera (W. Karanja (Mrs)

ABDI KADIR NOOR ISAACK.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

These appeals are consolidated. The three appellants were charged with two offences. In count one

they faced the charge of unlawful importation of firearms c/s 27(2) of The Firearms Act Cap. 114 Laws of Kenya. In count two, they were charged with being in possession of firearms c/s 4(1) (2) (a) of the same act without a firearm certificate. They denied the charges.

After a full trial, all the three appellants, were acquitted of the first count but convicted of the second count. Following that conviction, they were each sentenced to six(6) years imprisonment. Being aggrieved by the said convictions and sentences, they appealed.

At the hearing of these appeals the learned counsel for the appellants took the court through the record to show that the evidence did not warrant the convictions. The learned counsel for the Republic conceded the appeals, in agreement with the learned counsel for the appellant.

As the first appellate court, it is my duty to re-examine the entire evidence adduced in the lower court and arrive at independent conclusions. This I have done. At the end of it all, I am, with respect, in agreement with both learned counsel that the convictions were not well founded.

The appellants were clearing agents who cleared eight (8) cartons but which were detained for verification of duty payments. The goods remained in the custody of the police and when they were next viewed, the cartons were now ten (10) instead of eight(8). The three firearms were found in the cartons that the appellants had not cleared. The same had also been tampered with in the absence of the appellants.

On interrogation, the appellants led the police to the actual owner of the goods. The man was arrested and jointly charged with the appellants but his case was withdrawn as he disappeared after being bonded.

The issue of possession in law was not proved in view of the circumstances of this case. As agents, the appellants could not be said to be in possession of what they never handled. In view of the foregoing the appeals must succeed and it is so ordered.

Accordingly, the convictions are hereby quashed and sentences set aside. The three appellants are out on bail pending the determination of those appeal. The terms of their release are now vacated.

The learned trial magistrate made no orders in respect of the subject matter involved. I order that the firearms shall be forfeited to the state while the owner of the goods cleared by the appellants will be at liberty to claim the same through the relevant authority.

Orders accordingly.

Dated and delivered at Nairobi this 29th day of July, 2002.

MBOGHOLI MSAGHA JUDGE