

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO.833 OF 2001

From Original Conviction(s) and Sentence(s) Criminal Case No.293 of 2001
of the Chief Magistrate's Court at Nairobi

JOHNSON KAMAU WACHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offences of being in possession of firearm and ammunition respectively without a certificate c/s 4(2) (b) of the Firearms act Cap 114 Laws of Kenya and sentenced to three(3) years and one year imprisonment respectively.

Being aggrieved by the said conviction and sentence, he lodged an appeal.

Employees of Dippoly Plastics limited were entering their premises' gate at about 6.00 am when the appellant joined them. As he was unknown to the security guards he was stopped. After the gates were locked from inside he was questioned and searched. In his possession was a firearm with three rounds of ammunition. Securicor guards and police were called and the appellant was re-arrested.

When the appellant was questioned by the two guards who stopped him at the gates, he said he was an employee of Dippoly Plastics shop. In his defence however, he said he went to claim his dues from his former employer but when he reached the premises he was accosted by some people and a commotion followed. He was suspected to be a thief, beaten unconscious and later found himself at the police station.

The firearm was subsequently examined by a ballistic expert and found to be one under the firearms act and so were the rounds of ammunition.

I have made an independent evaluation of the evidence on record. It was not necessary to call the guards who were summoned by way of an alarm to give evidence. The issue here was that of possession. It is enough if the evidence adduced is corroborated.

The two security guards who stopped the appellant were consistent in all material particulars and more so the recovery of the gun in the possession of the appellant. These two witnesses had not known the appellant before and for that reason stopped him. There was not much time lapse between the encounter with the first guard and second to cause any inconsistency.

In my judgment, possession was proved, the appellant had no certificate and conviction was well founded.

As to sentence, section 4(3) (a) and (b) was amended by Act no. 11 of 1993 to provide minimum sentences for offences under section 4(3) (a) and maximum in respect of section 43(b). It is not clear from the evidence under which provision the firearm found in the possession of the appellant fell. For that reason I am unable to enhance the sentence as submitted by the learned counsel for the Republic. I can only comment that offences of this nature are serious.

In the end I find no merit in this appeal. The same is hereby dismissed.

Orders accordingly.

MBOGHOLI MSAGHA

JUDGE

18th December, 2002.