



REPUBLIC OF KENYA



**Republic v Karanja (Criminal Revision E003A of 2025)
[2025] KEHC 3110 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL REVISION E003A OF 2025**

J WAKIAGA, J

MARCH 6, 2025

BETWEEN

REPUBLIC APPLICANT

AND

JOSEPH KAMAU KARANJA RESPONDENT

RULING

1. The convict was charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the Penal Code on Count one and Count 2 being in possession of Fire Arm contrary to section 4(1) as read with section 4(3) (b) of the Fire Arm Act cap 114 laws of Kenya the particular of which were that on the 2nd November 2015 at New Mathere Flats area in Huruma location within Starehe Sub County of Nairobi County was found in possession of a Tarus Pistol serial number KMH07571 without fire arm certificate .
2. On Count 3 he was charged with being in possession of ammunition without Fire Arm certificate contrary to section 4(1) as read with section 4(3) (b) of the Fire Arm Act Cap 114 Laws of Kenya, the particular of which were that on the 2nd day of November 2015 at New Mathare Flats in Huruma location within Starehe Sub County of Nairobi County was found in possession of 4 rounds of 9mm of ammunition without fire arm certificate
3. He was tried and by a judgement thereon dated 18th December 2024 found guilty and convicted on count 1 and 2 thereof by Hon E. Mutunga who proceeded on transfer before passing sentence thereon.
4. On the 3rd February 2025, the file was placed before Hon. H. Siika for purposes of passing an appropriate sentence thereon and by a ruling thereon stated that she had read section 4(1) of the Fire arm Act and noted that the same did not prescribe an offence and therefore the accused should have been charged with section 4(2)(a) of the Fire Arms Act as read with section 4(3)(b) and therefore



referred the file to this court under its supervisory jurisdiction for directions thereof and the subject of this ruling.

5. Having called for the file and noting that the directions given by the court would have an effect on both the convict and the prosecution, I directed that both be served under the provision of section 364(2) of the [Criminal Procedure Code](#)

Submissions

6. On behalf of the prosecution Ms Kabungi submitted that the section disclosed an offence as it outlawed possession of fire arm without certificate and in support of her submissions, she relied upon the case of [Yattani Mamo v Republic](#) [2019] eKLR where the court on appeal stated that section 4(1) prohibits possession of fire arm or ammunition without a certificate. Section 4(2) also prohibits the purchase acquisition or possession of fire arm or ammunition without a licence and at the bottom of section 4(2) there is the word “he shall subject to this Act be guilty of an offence “. These words covers both sections 4(1) and 4(2) and are not limited to section 4(2) only
7. Mr. Bosire for the convict stated that no punishment is provided for under section 4(1) and whereas he conceded to the preposition contained in the authority of [Yattani Mamo](#) (*supra*) he submitted that the convict should be discharged.

Determination

8. From the proceedings herein, it is clear that the lower courts reading of the section under which the convict is charged has been answered by this court in the case of [Yattani Mamo](#) (*supra*) where the contention as in her understanding herein was that the accused should have been charged under section 4(1) as read with section 4(2) of the [Fire Arm Act](#) and as submitted by the prosecution, the court stated that the offence created under section 4(1) prohibits the manufacture , assembly purchase acquisition without approval certificate and that the words Shall be guilty of an offence at and the of Section 4(2) covers both Section 4(1) and 4(2) and that the fact that section 3 makes reference to Section 4(2) only does not mean that an offence cannot be committed under Section 4(1) .
9. The court in the case of [Mashat Muhammed Ali & 8 others v Republic](#) [2012] KEHC 4174(KLR) answered the lower court question in the following manner;

“Section 4(1) of the *Firearms Act* makes it illegal for a person to purchase, acquire or have possession of any firearm or ammunition without a valid Firearms Certificate. It is couched in the following terms;

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

There would be no difficulty in understanding this provision. It simply outlaws the purchase, acquisition or possession of any firearm or ammunition without a valid Firearms Certificate.

I agree with Counsels submission that it is Section 4(2) of The Firearms Act that specifically creates the offence. It goes beyond the definition and elaborates on the various aspects of the offence. No doubt the framing of Counts II and VI did not conform with the provisions of Section 137 a(ii) of The [Criminal Procedure Code](#) which provides that-

“the statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential



elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the Section of the enactment creating the offence.” (emphasis mine)

What then is the effect of this irregularity? It helps to reproduce Counts II and VI fully. They read as follows-

“Count I:

Being In Possession Of Firearms Without A Firearm Certificate Contrary To Section 4(1) As Read With Section 4(3)(a) Of The *Firearms Act* Cap 114 Laws Of Kenya.

On the 1st day of December 2009 at the Sea Shore of Tenawi Village, Baharini Location in Lamu District within Coast Province, jointly were found in possession of 7 AK 47 assault rifles S/No. 56-129337188, 56 – 1102890, AQ – 78642, 56 – 170017.85, 56-22100098, 56-16035, 56 – 48048988, with 18 AK 47 magazines and one rocket propelled grenadelauncher S/No.810060 without firearms certificate in force at the time.

Count VI

Being In Possession Of Firearm Without Firearms Certificate Contrary To Section 4(1) As Read With Section 4(3) (a) Of The *Firearms Act* Cap 114 Laws Of Kenya.

On the 1st day of December 2009 at the Sea shore of Tenawi village, Baharini Location in Lamu District within Coast Province, jointly were found in possession of one Tokarev Pistol S/No. 2007923 with one magazine without firearms certificate in force at the time.”

As is evident, notwithstanding the failure to state the enactment creating the offences, the charges contain sufficient detail and particulars to inform the appellants of the nature of the offences they faced.

The charges as framed disclosed an offence known in law albeit its omission to specifically refer to Section 4(2) which creates the offence. In addition, the charges specified Section 4(3)(a) of The *Firearms Act* which prescribes the punishment. This court cannot see how the lapse in framing of the charges occasioned a failure of justice as the appellants were fully informed of the charges they faced and the possible sentence if convicted. Lapses of this nature are complempted by the provisions of Section 382 of The [Criminal Procedure Code](#). I also give regard to the fact that upto the close of the prosecution case the appellants were represented by counsel. There was sufficient opportunity to raise an objection but non was raised. It must be assumed that they acquiesced to the defects. I find that the defects in Count II and VI cannot vitiate the proceedings and the conviction in respect thereof.”

10. Whereas this court took a similar view with the Magistrate, it stated further that the omission was not prejudicial to the convict and that the court had a recourse to Section 382 of the [Criminal Procedure Code](#) cures any defect in the Charge Sheet which was not raised by the convict.
11. It therefore follows that the conviction herein is lawful and the court shall proceed with the sentence herein the conviction having not been challenged and it is ordered.

SIGNED DATED AND DELIVERED AT MAKADARA THIS 6th DAY OF MARCH 2025

J.WAKIAGA JUDGE

In the presence of

Ms. Kariuki for the state

Mr. Bosire for convict



Mr. Gitonga – Court Assistant

