



REPUBLIC OF KENYA



KENYA LAW
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**Nzue v Republic (Criminal Appeal E040 of 2022)
[2023] KEHC 3969 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E040 OF 2022**

GMA DULU, J

MAY 4, 2023

BETWEEN

KIOKO NZUE APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Criminal Case No. E261
of 2021 at Kilungu Law Court by Hon. E. Muiru – PM)*

JUDGMENT

1. The Appellant was convicted on 3rd June, 2021 on his own plea of guilty to a charge of being in possession of imitation firearm contrary to Section 34(1) of the *Firearms Act* (Cap 114). He was sentenced to pay a fine of Kshs. 300,000/= and in default to serve 4 years imprisonment. He thereafter filed this appeal against both conviction and sentence on 21st March, 2022. In his submissions however, he has stated that he wants this court to consider reviewing the sentence only.
2. The learned Prosecution Counsel has left the matter of sentence to the court to decide, as the appellant surrendered the imitation pistol to the village elders on his own volition. I note that the appellant was not able to pay the fine. I am also aware that sentencing is an exercise of discretionary power by a trial court.
3. In my view, in the circumstances of this case wherein the appellant surrendered the item voluntarily to the authorities, was a first offender, had not used the toy firearm to scare anybody, and pleaded guilty, the sentence imposed by the trial court was harsh and excessive. I will thus reduce the sentence to that already served.
4. I thus allow the appeal on sentence. I set aside the sentence imposed and order that the appellant will instead serve the prison sentence served to date. The appellant will thus be released from custody unless otherwise lawfully held.



DATED, SIGNED AND DELIVERED THIS 4TH DAY OF MAY, 2023 VIRTUALLY FROM VOI.

GEORGE DULU

JUDGE

In the presence of:-

Mwendwa Court Assistant

Appellant

Mr. Kazungu for the state.

