



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA
CRIMINAL APPEAL NO. E016 OF 2020
JIBRIL ADAN ALI....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGEMENT

1. This is an appeal arising from the Judgement of Hon. Mugendi Nyaga in Senior Resident Magistrate Criminal Case No. 460 of 2019, Wajir where the appellant was charged with three counts.

Count I being in possession of ammunition without holding a firearms certificate in force at the time contrary to Section 4(2) (a) as read with Section 4 (3) (a) of the Firearms Act.

The particulars of this count being that on the 25th of November 2019 at around 1400 hours at Gotade area of Wajir East Sub-County within Wajir County he was found in possession of eighteen rounds of ammunitions of caliber 7.62 by 39mm in contravention of the Act.

2. Count II being a member of a terrorism gang contrary to Section 24 of the Prevention of Terrorism Act 2012.

The particulars of this offence were that on 25th of November, 2019 at Gotade area in Wajir East Sub-County within Wajir County; he was found to be a member of a terrorism group namely Al-shabaab in contravention of the Act.

3. Count III being in possession of property for the commission of terrorist acts contrary to Section 6 of the Prevention of Terrorism Act 2019.

The particulars of the offence are that at Gotade area of Wajir East Sub-County within Wajir County, he was found in possession of property namely eighteen rounds of ammunitions of caliber 7.62 by 39mm which are properties for the commission of terrorism acts in contravention of the Act.

4. The matter proceeded to full hearing with both sides calling evidence. The appellant was found guilty of the first count and sentenced to 7 years imprisonment.

5. The appellant was dissatisfied with the judgement and filed an appeal on grounds that:

- a. The trial court erred in facts by failing to find that the prosecution case was based on a grudge between the appellant and his former wife.**
- b. The trial court erred in law and fact by failing to fault the investigations for not disclosing the source of suspicion on the appellant.**
- c. The trial court erred in fact and law by failing to find that the bullets were planted on the appellant.**
- d. The court shifted the burden of proof.**
- e. The case was not proved to the required standard.**
- f. The court erred by dismissing the defense.**

6. The duty of this court is to evaluate, examine and analyse the evidence on record and arrive at its own independent opinion (**see Okeno vs Republic [1972] E.A.**).

7. From the prosecution side, the ATPU Unit received information that a person who was gun running had been spotted in Wajir and following the said information they arrested the appellant who took them to his house where they recovered 18 rounds of ammunitions from under a mattress. The ammunitions were tested and were found to be capable of being fired. PW2 and PW3 arrested and searched the appellant's house.

8. On the part of the defence they denied that the appellant was found in possession of the ammunitions as alleged stating that the officers who searched the house planted the same and that the appellant was arrested at the behest of his wife due to a grudge between the two.

9. Having considered the evidence I am convinced that the police on a tip off arrested the appellant who took them to his house where the ammunitions were recovered. The issue is not who gave the information but whether or not ammunitions were found in the appellant's house. I find the evidence of PW2 and PW3 who are police officers to be credible. This evidence was not dislodged by the defence who alleged that it was a set up due to a grudge the appellant had with his wife. Why would two police officers, one very senior, play into a domestic issue of the two. Grounds **a, b, c, d and f** therefore collapse.

10. Further the court finds that the prosecution proved the case beyond all reasonable doubt that the appellant was found in possession of 18 rounds of ammunitions and when tested same were active.

11. For the above reasons the appeal lacks merit and is dismissed.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 7TH DAY OF OCTOBER, 2021.

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ALI-ARONI

JUDGE