



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO 39 OF 2020

MPAAPA NAIPUTARI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Appeal from original Sentence in Nanyuki CM Criminal Case No 175 of 2018 – L Mutai, CM)

J U D G M E N T

1. The Appellant herein, **MPAAPA NAIPUTARI**, and his co-accused, were acquitted after trial of the main charge of robbery with violence contrary to section 296(2) of the *Penal Code* but were convicted of the alternative charge of **handling stolen property** contrary to **section 322(2)** of the Penal Code. For this offence the Appellant was sentenced to four (4) years imprisonment. His co-accused was sentenced to three (3) years imprisonment.
2. The Appellant was also convicted in count II of **unlawful possession of ammunition** (6 rounds of 7.62 x 51 mm bullets) **without a firearms certificate**. For this offence he was sentenced also to four (4) years imprisonment. The Appellant's sentences were directed to run consecutively.
3. The Appellant has appealed only against the sentence. His co-accused apparently did not appeal. The Appellant has two complaints against the sentences meted out to him –
 - a) The disparity between his sentence (4 years imprisonment) and his co-accused's sentence (3 years imprisonment) in the alternative charge to count I.
 - b) The order that his two sentences each of 4 years imprisonment do run consecutively.
4. With regard to the first complaint, ordinarily accused persons tried and convicted together ought to be treated the same as far as sentence is concerned, unless there is any special reason to treat them differently. In this case the Appellant was treated differently because he "*had in his possession 6 rounds of ammunition for destruction purposes.*" The trial court appears to have overlooked the fact that the Appellant had been convicted of illegal possession of those 6 rounds of ammunition and was just about to be sentenced for that second offence, thus exposing him to double-jeopardy in the sentence. There was no good reason at all to treat him differently from his co-accused as far as the alternative charge to count I was concerned.
5. I will in the event set aside that sentence of 4 years imprisonment for the alternative charge to count I and substitute therefor imprisonment for three (3) years from the date of sentencing by the trial court. It is so ordered.
6. Regarding the order that the Appellant's two sentences of imprisonment do run consecutively, it is to be noted that ordinarily, where the offences concerned were distinct and committed in different transactions, and/or in different times or places, and/or involving different victims, an order for sentences to run consecutively can legitimately be made at the discretion of the trial court. See **section 14(1)** of the *Criminal Procedure Code*. This is notwithstanding that the offences have been tried in the same proceeding. This is however subject to the limitation imposed by **subsection (3)** of section 14 aforesaid, to the effect that the aggregate of the consecutive sentences should not amount to more than 14 years, or twice the amount of imprisonment that the court, in exercise of its ordinary jurisdiction, is competent to impose.
7. However, the said limitation does not apply where the subordinate court concerned is of the first class held by a chief magistrate, senior principal magistrate, principal magistrate or senior resident magistrate. See **section 7(1)** of the *Criminal Procedure Code*. In the present case the court concerned was held by a chief magistrate. The order for the sentences to run consecutively was thus lawful.

8. It will be noted also, that though the two offences the Appellant was convicted of were committed on 30/01/2018 at Ewaso Village within Laikipia County, they were distinct and not connected at all. In the first offence the Appellant dishonestly received and retained a VHF radio charger and cable, a pair of sun-glasses, and a pen knife and its holder, knowing or having reason to believe them to be stolen property. In the second offence he was found in unlawful possession of six rounds of ammunition. These two offences were not committed in the same criminal transaction as there was no evidence that he received the bullets together with the stolen properties.

9. Finally, the sentences imposed upon the Appellant cannot be said to be manifestly harsh or excessive; it has not been so demonstrated.

10. In the result I find no merit in the complaint regarding the order that the Appellant's sentences do run consecutively. Except to the limited extent already ordered in respect to the sentence for the alternatively charge to count I, the Appellant's appeal against sentence is hereby dismissed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 6TH DAY OF OCTOBER 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 7TH DAY OF OCTOBER 2021