

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 175 OF 2018

MOSES WAFULA MULUNDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment, conviction and sentence of Hon. H. Ong'ondo- PM

delivered on 21st April, 2017 in the Chief Magistrate's Court at Kakamega

in Criminal Case No. 280 of 2014, Republic vs Moses Wafula Mulunda)

JUDGMENT

1. During the hearing of the appellant's appeal, the appellant abandoned his appeal against his conviction. He then proceeded to argue his appeal against the sentence only. He submitted that the five (5) years imprisonment which was imposed upon him in respect of Count VI, which charged him with being in possession of 380 Rounds of Ammunition without a Firearm certificate contrary to Section 4A (1) (a) of the Firearm Act (Cap 114) Laws of Kenya, was excessive.

2. In addition to being convicted and sentenced to five (5) years imprisonment for being in possession of 380 Rounds of Ammunition, he was also convicted for being in possession of a gun in Count V, a matter in respect of which he was sentenced to serve four (4) years imprisonment. He was also sentenced to serve four (4) years imprisonment in Count VII in respect of being found jointly with others in possession of 21 rounds of ammunition. All these sentences were ordered to run concurrently. In this court the appellant has submitted as follows.

3. He has submitted that the sentence of five (5) years imprisonment should run from 21st April, 2017. That is the date when he was convicted and sentenced. In effect he is urging the court to backdate the sentence to run with effect from that date. This is not allowed by the law. Instead the law in section 333 (2) of the Criminal procedure code (Cap 75) authorizes this court to take into account the period, the appellant has been in custody. I therefore find no merit in this omission.

4. Furthermore, the appellant has submitted that he has now reformed and wants to set a good example to his family. Additionally, he has submitted that he has now learnt a trade namely carpentry and compute lessons, while in prison which he intends to apply after being released.

5. Apart from the foregoing submissions the appellant handed in his written submissions titled: "Amended grounds." I have perused them and I find they are in essence a duplication of his oral submissions, except that he has urged the court to grant an order directing the officer in charge of Kakamega main prison not to allow him to let this sentence to begin in 2021. In law the officer in charge cannot legally do so, for a sentence once passed generally takes effect after pronouncement. I have been invited by the appellant to take note that he is currently serving a sentence of seven (7) years imprisonment imposed by the Senior Resident magistrate in Kapsabet in Criminal Case No. 451 of 2014. That case is not before me and I will not say anything about it.

6. Ms. Rotich has conceded the sentence.

7. I find that the appellant was convicted of being in possession of a total of 401 rounds of ammunition and a gun. I find that the appellant had a large amount of rounds of ammunition to the extent of amounting to him operating a personal armoury. The sentence is merited.

8. In the light of the foregoing, the appellant's appeal is dismissed in its entirety.

Judgment signed, dated and delivered in open court at Kakamega this4th day ofSeptember...2019.

In the presence of the appellant and Ms. Rotich for the state.

J.M. BWONWONG'A

JUDGE