



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO. 40 OF 2016**

**JOSEPH MURIITHI.....APPELLANT**

*versus*

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 1008 of 2014 by Hon. T. MATHEKA – Chief Magistrate on 3<sup>rd</sup> November 2015)*

**JUDGMENT**

1. **JOSEPH MURIITHI, the appellant**, was convicted after trial for the **offence of being in possession of firearm contrary to section 26(1) as read with section 26(2)(a) of the Firearm Act Cap 114**. He was sentenced to serve **6 years** in prison. Appellant has filed this appeal against that sentence.

2. He has premised his appeal on the grounds that he is remorseful; he has reformed; and that he has been trained, in prison, as a welder. In his written submissions he stated that his waywardness, which led to his conviction, was due to his lack of formal education which resulted in him being poor. He also stated that he needed to be set free from prison because he was injured by the arresting officers and has not received corrective medical treatment.

**BACKGROUND OF CONVICTION**

3. The appellant was employed as a farm assistant by Cecilia Gichuru. He worked for her for 30 days where upon on her returning home one day she found the appellant missing together with three of her pigs. Cecilia began searching for the whereabouts of the appellant. While she was at the public transport stage she saw the appellant carrying luggage. With the assistance of those at the stage she arrested the appellant whom they frogmarched to the police station. As the appellant was being processed by the officer who re-arrested him a gun was found in his luggage. The trial court having found that the prosecution had proved its case against the appellant convicted him and sentenced him to 6 years imprisonment. The trial court in sentencing the appellant stated thus:-

***“..... he is found guilty of an offence that bears a minimum sentence of 7 years. Considering that he is a first offender, and considering he has been in custody for about one year accused (appellant) is sentenced to 6 (six) years imprisonment.”***

**COURTS DETERMINATION**

4. The appellant was convicted of the offence that falls under **section 26(1)** as read with section **26(2)(a)** of **Cap 114**. Under those sections the minimum sentence on conviction is 7 years imprisonment. The trial court's hands were tied by those sections. The trial magistrate was correct in taking into account the one

year the appellant spent in remand in her sentencing the appellant. This was in compliance to **section 333(2)** of the Criminal Procedure Code Cap. 75.

5. It follows that appellant's appeal against sentence fails because it is not supported by the law. He was sentenced to the very minimum sentence under the law. The trial court in sentencing him to the minimum period noted that it was due to the fact that he was first offender. The **Zambian Supreme Court** in the case **PHIRI V THE PEOPLE (1970) SJZ 178** had this to say on leniency for first offender:-

*“A first offender should not be denied leniency although circumstances may make the application of such leniency minimal. The reason for dealing with a first offender leniently is in the hope that a severe sentence is not necessary and that a lenient sentence will be sufficient to teach a previously honest man a lesson.”*

6. I wholly support that find of the **Zambian Supreme Court** and it has application to this case. Accordingly appellant's appeal against sentence is dismissed. The trial court's sentence is upheld.

7. I order the prison authorities to ensure the appellant is taken to a health facility for treatment.

**DATED AND DELIVERED THIS 7<sup>TH</sup> DAY OF FEBRUARY 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Joseph Muriithi .....

For the State: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**